

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

JANET L WINKEMPLECK
Claimant

APPEAL NO. 10A-UI-10461-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

**Original Claim: 06/13/10
Claimant: Appellant (4)**

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated July 14, 2010, reference 02, which denied benefits effective June 13, 2010, upon a finding the claimant was not able to perform work and therefore did not meet the availability requirements of the law. After due notice was issued, a telephone hearing was held on September 9, 2010. The claimant participated personally. The employer participated by Ms. Monica Dyar, human resource supervisor.

ISSUE:

At issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Janet Winkempleck was employed by West Liberty Foods as a full-time boxer from February 11, 2008, until April 26, 2010, when she was unable to continue reporting to work due to a back injury.

Ms. Winkempleck underwent back surgery at the end of April 2010. Due to medical limitations related to her back surgery, the claimant was unable to work until the week ending July 24, 2010. During the week ending July 24, 2010, Ms. Winkempleck's physician determined that she was sufficiently healed to return to light-duty employment.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was able to work effective June 13, 2010. It does not.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The evidence in the record establishes that Ms. Winkempleck was not able to work because of a back injury and therefore did not meet the able and availability requirements of the law effective June 13, 2010, the date that she applied for unemployment insurance benefits. The evidence establishes that, subsequently, the claimant was released to return to light-duty employment effective the week ending July 24, 2010.

Based upon the additional evidence available at the time of hearing, the administrative law judge concludes that the claimant did not meet the ability requirements of the Iowa Employment Security Act from June 13, 2010, through the week ending July 24, 2010. The administrative law judge concludes the claimant meets the ability requirements of the law following the week ending July 24, 2010, and is eligible to receive unemployment insurance benefits, provided she has met all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated July 14, 2010, reference 02, is affirmed as modified. The claimant was not able to work from June 13, 2010, through the week ending July 24, 2010. The claimant is eligible to receive unemployment insurance benefits following that date, provided she meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw