

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANAMARIA L LEYVA**  
Claimant

**APPEAL NO. 09A-UI-15581-MT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 09/06/09**  
**Claimant: Appellant (1)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated October 12, 2009, reference 02, which held claimant not able and available for work. After due notice, a telephone conference hearing was scheduled for and held on November 20, 2009. Claimant participated personally. Employer participated by Eloisa Baumgartner, Employment Manager.

**ISSUE:**

The issue in this matter is whether claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant went off work due to a medical leave of absence effective September 3, 2009. Claimant was not able to work full duty until November 16, 2009. Claimant has returned to work.

**REASONING AND CONCLUSIONS OF LAW:**

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".

871 IAC 24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

871 IAC 24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

Inasmuch as the illness was not work-related and the treating physician has released the claimant to return to work, the claimant has established the ability to work. Benefits shall be allowed effective November 16, 2009. Claimant is not eligible for benefits from September 3, 2009 through November 15, 2009 because she was not able and available for work. Claimant was not able to work full duty which is a requirement for collecting unemployment.

**DECISION:**

The decision of the representative dated October 12, 2009, reference 02, is affirmed. Claimant is eligible to receive unemployment insurance benefits, effective November 16, 2009, provided claimant meets all other eligibility requirements. Benefits shall be withheld September 3, 2009 through November 15, 2009.

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Marlon Mormann  
Administrative Law Judge

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Decision Dated and Mailed

mdm/pjs