

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CECILIA PURIC**  
Claimant

**APPEAL NO. 07A-UI-00929-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 12-17-06 R: 03**  
**Claimant: Appellant (2)**

Iowa Code § 96.4(3) - Able and Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the January 18, 2007, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on February 8, 2007. Claimant participated and was represented by Terra Wood, Attorney at Law. Employer participated through Jerome Rinken. Claimant's Exhibit A was received.

**ISSUE:**

The issue is whether claimant is able to and available for work.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant is under a doctor's care for her work- related shoulder and neck cumulative injury. She was released to return to work for about a week in December 2006 but the job to which the employer assigned her (picking fat and pieces of meat from the conveyor and placing them in a chute) continued to cause her neck and shoulder pain. Her treating physician took her off work again because employer was not following her work restrictions and she provided that information to the company nurse. There are jobs that would meet her restrictions such as interpreter or monitor but employer has not made those available to her.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work.

Iowa Code § 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 24.23(1) and (35) provide:

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

(1) An individual who is ill and presently not able to perform work due to illness.

(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 injury was work-related and the treating physician has released the claimant to return to work, even with restrictions the claimant has established her ability to work. Because the employer had no work available or was not willing to accommodate the work restrictions, benefits are allowed.

**DECISION:**

The representative's decision dated January 18, 2007, reference 01, is reversed. The claimant is able to work and available for work effective December 17, 2006. Benefits are allowed, provided the claimant is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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