

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PENNY A JONES

Claimant

APPEAL NO: 09A-UI-08777-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP

Employer

OC: 05/04/08

Claimant: Appellant (1)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant appealed a department decision dated June 16, 2009, reference 03, that held she was unable to perform work due to surgery, and benefits are denied June 26, 2009. A telephone hearing was held on July 6, 2009. The claimant participated. Alicia Alonzo, Human Resource Generalist, participated for the employer.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant worked for the employer as a full-time production worker from April 5, 1999 to sometime into 2007. The claimant suffered from a non-work-related back injury, and went on FMLA leave for a period of time. The claimant was unable to return to work when the leave was exhausted, and she had back surgery on June 25, 2008. The claimant was unable to work due to her back injury in May 2008. The employer still considers the claimant to be an employee.

The claimant returned to work on November 10, 2008, and worked until January 20, 2009. The claimant left work due to back pain and sought treatment from her physician. The claimant's physician submitted a statement dated January 28 that claimant could return to work with a restriction that limited her to 20 hours. The employer would not allow the claimant to return due to the restriction, as the claimant is considered a full-time employee. The restriction remains through the date of this hearing, and the claimant is still considered as employed.

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".

The administrative law judge concludes that the claimant was unable to perform full-time, unrestricted work effective April 19, 2009 due to a non-work-related back injury.

In order for the claimant to be eligible for unemployment benefits, the claimant must be able to work the same, full-time job she has worked for the employer, without restriction. Since the claimant is restricted to 20 hours as of the date of this hearing, she is not able to work her full-time job, and not eligible for benefits.

DECISION:

The department decision dated June 16, 2009, reference 03, is affirmed. The claimant was not able to perform work due to a restricted work release relating to a non-job-related injury effective April 19, 2009, and benefits are denied.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs