

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LYDIA A OCHOA**  
Claimant

**APPEAL NO. 09A-UI-19039-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS CORP**  
Employer

**Original Claim: 02/01/09  
Claimant: Appellant (2)**

Section 96.4-3 – Eligibility for Benefits

**STATEMENT OF THE CASE:**

Lydia A. Ochoa filed a timely appeal from an unemployment insurance decision dated December 15, 2009, reference 05, that denied benefits to her. After due notice was issued, a telephone hearing was held January 22, 2010, with Ms. Ochoa participating and being represented by Philip F. Miller, attorney at law. The employer, Cargill Meat Solutions Corporation, did not respond to the hearing notice.

**ISSUE:**

Does the claimant meet the eligibility requirements of being able to work and available for work?

**FINDINGS OF FACT:**

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Lydia A. Ochoa is an employee of Cargill Meat Solutions Corporation who is working sporadically due to medical restrictions. She is able to perform some jobs at the plant but none that offer regular work. She has prior experience as a security guard, a custodian, and a cashier. Ms. Ochoa is fluent in Spanish and is taking courses to improve her English skills. She would be able to work in any of these other positions now without violating her medical restrictions. Jobs such as these exist in the claimant's local labor market area.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the claimant is medically able to work and is available for work. She is.

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 this record establishes that the claimant is able to work with some medical restrictions. An individual may be denied unemployment insurance benefits according to 871 IAC 24.13(19) if the individual is not willing to accept work in the individual's usual occupation and has failed to establish what other types of work the individual can perform. Here, the claimant has established that she can work in her normal occupation, although perhaps not performing all of her previous duties. She has, in addition, established through her work history other occupations in which she can work consistent with her medical restrictions. Since the record also establishes the existence of these occupations in the claimant's local labor market, benefits are allowed.

**DECISION:**

The unemployment insurance decision dated December 15, 2009, reference 05, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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