

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELMA MUSLIC
Claimant

APPEAL NO: 12A-UI-09018-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 07/31/11
Claimant: Appellant (4)**

Iowa Code § 96.4(3) – Able to and Available for Work

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's July 23, 2012 determination (reference 02) that held her ineligible to receive benefits from November 13, 2011, through May 26, 2012, because she was unable to work. The claimant participated in the hearing with her attorney, Adana Mahmutagic. Tanja Abamovic interpreted the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the claimant is ineligible to receive benefits from December 11, 2011, through May 26, 2012. She is eligible to receive benefits for the weeks ending November 10 through December 10, 2011.

ISSUE:

Is the claimant able to and available for work November 13, 2011, through May 26, 2012?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of July 31, 2011. The claimant had been injured while working at Tyson on February 13, 2011. The Tyson physician released her to work with a weight restriction of no more than 25 pounds and no bending. The claimant was limited to working no more than eight hours a day.

The claimant saw another doctor in November 2011. This doctor advised her to have surgery, but her previous work restrictions did not change. Although the claimant could not do the work she had been doing at Tyson's, she was able to work as a cashier or any job that did not require her to stand a long time or require her to pull or lift more than 25 pounds.

On December 1, 2011, the claimant told her local Workforce office she was having surgery on December 8, 2011. After her surgery, her physician did not release her to work until May 27, 2012.

In 2011, the claimant filed weekly claims for the weeks ending August 6 through December 10, 2011.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefit, she must be able to and available for work. Iowa Code § 96.4(3). Even though the claimant was unable to perform the work she had been doing at Tyson's, she established she was able to perform meaningful work. Since the work restrictions she received in November had not changed from her previous work restrictions, the fact she had up-coming surgery does not change her ability to work.

The claimant was not able to work as of December 11, 2011, through May 26, 2012. Since the claimant was able to and available to work the majority of the week she had surgery, she is eligible to receive benefits for the week ending December 10, 2011.

DECISION:

The representative's July 23, 2012 determination (reference 02) is modified in claimant's favor. The claimant is eligible to receive benefits for the weeks ending November 19 through December 10, 2011. From December 11, 2011, through May 26, 2012, the claimant is not eligible to receive benefits, because her physician did not release her to work until the week of May 27, 2012.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw