

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NORAH S NDEKE
Claimant

TYSON FRESH MEATS INC
Employer

**APPEAL 21A-UI-02872-AD-T
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/16/20
Claimant: Appellant (4R)**

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search

STATEMENT OF THE CASE:

On January 10, 2021, Norah Ndeke (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated December 31, 2020 (reference 01) that denied benefits as of August 16, 2020 based on a finding claimant was still employed for the same hours and wages.

A telephone hearing was held on March 11, 2021. The parties were properly notified of the hearing. Claimant participated personally and with the assistance of a French-language interpreter. Tyson Fresh Meats Inc (employer/respondent) participated by Lori Dizenzo.

Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began working for employer on November 5, 2018. Claimant was employed full-time as a production line worker. Claimant last performed work for employer on August 5, 2020. Claimant did not return to work after that date due to being ill and not having childcare. Claimant has not since attempted to return to work with employer. Employer formally separated claimant from employment on September 14, 2020.

Claimant was available for work again on August 25, 2020, when claimant's child returned to school. However, claimant was still ill and unable to work until September 10, 2020. Claimant had recovered enough then to be able to work. Claimant has been searching for work unsuccessfully since that time.

The issue of claimant's separation from employment has not yet been the subject of a fact-finding interview and decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the decision dated December 31, 2020 (reference 01) that denied benefits as of August 16, 2020 based on a finding claimant was still employed for the same hours and wages is MODIFIED in favor of appellant. Claimant was separated from employer and able to and available for work from the benefit week ending September 19, 2020. The issue of whether claimant's separation from employment was disqualifying is REMANDED to the Benefits Bureau for a fact-finding investigation and decision with due notice and right of appeal to be provided.

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 finds claimant was separated from employer and able to and available for work from the benefit week ending September 19, 2020. Prior to that time, claimant was either unavailable for work due to a lack of childcare or unable to work due to illness and therefore ineligible for benefits.

However, the issue of whether claimant's separation from employment was disqualifying must be determined. That issue is not before the administrative law judge and has not yet been the subject of a fact-finding investigation and decision. That issue is therefore REMANDED to the Benefits Bureau for a fact-finding investigation and decision with due notice and right of appeal to be provided.

DECISION:

The decision dated December 31, 2020 (reference 01) that denied benefits as of August 16, 2020 based on a finding claimant was still employed for the same hours and wages is MODIFIED in favor of appellant. Claimant was separated from employer and able to and available for work from the benefit week ending September 19, 2020.

REMAND:

The issue of whether claimant's separation from employment was disqualifying is REMANDED to the Benefits Bureau for a fact-finding investigation and decision with due notice and right of appeal to be provided.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

March 15, 2021
Decision Dated and Mailed

abd/lj

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

