

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**BIAK PAR**  
Claimant

**APPEAL NO. 20A-UI-09827-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**  
Employer

**OC: 04/12/20**  
**Claimant: Appellant (1R)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(10) – Able & Available – Availability Disqualifications

**STATEMENT OF THE CASE:**

Biak Par filed a timely appeal from the August 12, 2020, reference 01, decision that denied benefits effective April 12, 2020, based on the deputy's conclusion that Ms. Par was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on September 30, 2020. Ms. Par participated and presented additional testimony through Bawi Tin Zi. Vicki Cervantes represented the employer. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A. Hakha Chin – English interpreter Debra Ning of CTS Language Link assisted with the hearing.

**ISSUES:**

Whether the claimant was able to work and available for work during the period of April 12, 2020 through August 8, 2020.

Whether the claimant was temporarily and/or partially unemployed during the period of April 12, 2020 through August 8, 2020.

Whether the employer's account may be charged for benefits paid to the claimant for the period of April 12, 2020 through August 8, 2020.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: At the time Biak Par established the original claim for benefits that was effective April 12, 2020, she was employed by Swift Pork Company, also known as JBS, as a full-time second-shift production worker in the ham boning area. Ms. Par usually worked Monday through Saturday. Ms. Par last performed work for the employer on April 11, 2020. Before Ms. Par went off work, the employer met with production employees to advise that a plant employee had tested positive for COVID-19, but that the employee in question had not been in direct contact with production employees. The employer advised the employer would place hand sanitizer near plant entrances and mandate face masks. The employer hoped to reassure production workers, but some, like Ms. Par were afraid to continue in the employment. The employer advised that the company would not be closing its doors and would continue the essential work of producing

food. The employer advised that those employees who chose to go off work would be subject to the attendance policy. Ms. Par is an injectable insulin dependent diabetic. Ms. Par concluded she would be placing herself at risk by continuing to report for work beyond April 11, 2020 in the face of the COVID-19 pandemic. After Ms. Par went off work, she continued to call in daily absences until June 17, 2020.

On June 5, 2020, the employer mailed a letter to those employees who had remained off work due to their concern about COVID-19. The letter stated that any employee who did not make contact with the employer human resources staff by June 19, 2020 would be terminated from the employment. After Ms. Par received the letter, she made contact with the employer's community liaison. However, Ms. Par did not make contact with the human resources personnel return to the employment. After June 19, 2020, Ms. Par assumed she had been discharged from the employment and did not make further contact with Swift/JBS. Ms. Par eventually obtained other employment that she started on August 12, 2020.

Once Ms. Par established her claim for unemployment insurance benefits, Iowa Workforce Development set her weekly benefit amount at \$481.00. Ms. Par received that amount for each of the weeks between April 19, 2020 and August 8, 2020. Ms. Par also received \$600.00 in Federal Pandemic Unemployment Compensation (FPUC) for each of the weeks between April 19, 2020 and July 25, 2020.

#### **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".

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a

market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(10) provides:

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

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

...

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

If a claimant individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

The weight of the evidence establishes that Ms. Par elected to remain voluntarily unemployed from April 12, 2020 through August 8, 2020, out of concern of the risk posed by COVID-19 in light of her underlying health issue. The evidence establishes that the employer continued to have the same work available for Ms. Par until June 19, 2020 and would have had work available beyond that date if Ms. Par had made the requested contact. Ms. Par has not established that she met the work availability requirement, even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20. Ms. Par is not eligible for regular, state-funded unemployment insurance benefits for the period of April 12, 2020 through August 8 2020. The employer's account will not be charged for benefits for that period.

Even though claimant is not eligible for regular unemployment insurance benefits under state law, the claimant may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed.

**DECISION:**

The August 12, 2020, reference 01, decision is affirmed. The claimant was not available for work within the meaning of Iowa Code section 96.4(3) during the period of April 12, 2020 through August 8, 2020. The claimant is not eligible for regular, state-funded unemployment insurance benefits for that period.

This matter is remanded to the Benefits Bureau for entry of an initial decision regarding the employment separation that the parties assert occurred on June 19, 2020.



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James E. Timberland  
Administrative Law Judge

October 2, 2020  
Decision Dated and Mailed

jet/scn

**NOTE TO CLAIMANT:**

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you have received.**