

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

AUSTIN J HELRIGHT
Claimant

SWIFT PORK COMPANY
Employer

APPEAL NO. 20A-UI-13389-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/12/20
Claimant: Appellant (1R)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 19, 2020, reference 01, decision that denied benefits effective July 12, 2020, based on the deputy's conclusion that the claimant was not able to work in his usual occupation, had not established what other types of work he was able and willing to perform, and was unduly limiting his availability for work. After due notice was issued, a hearing was held on December 22, 2020. Claimant participated. The employer did not provide a telephone number for the hearing and did not participate. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

ISSUE:

Whether the claimant had been able to work and available for work since July 12, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established an original claim for benefits that was effective July 12, 2020. By the time of the December 22, 2020 appeal hearing, the claim had made weekly claimant for consecutive weeks between July 12, 2020 and December 19, 2020.

Swift Pork Company, otherwise known as JBS, is the claimant's most recent employer. The claimant commenced his full-time employment with Swift in November 2019 and last performed work for the employer on July 11, 2020. The claimant was hired as a "probationary knife," but used performed work operating a powered pallet jack. The claimant's shift usually started at 2:30 or 3:30 p.m. and went to 12:30 a.m., Monday through Friday, and to 5:00 p.m. on Saturdays.

After the claimant worked on July 11, 2020, he went off work with symptoms consistent with COVID-19. These included shortness of breath, headache and dry cough. The claimant was tested for COVID-19. The claimant received his COVID-19 test results on July 20, 2020 and learned that he had tested positive for COVID-19. The claimant was using Van Buren County Health Center as his health care provider. The provider advised the claimant to quarantine a

minimum of 10 days or until the claimant's symptoms went away. The claimant requested and the employer's third-party leave administrator approved a two-week leave of absence under the Family and Medical Leave Act (FMLA).

By July 24, 2020, the claimant's symptoms had dissipated and he was physically able to return to work. However, the claimant did not return to work at that time. The employer had established a COVID-19 safety protocol whereby employees were required wear a face mask. The claimant asserted, and continues to assert, an inchoate religious exemption to wearing the mask that would assist in slowing the spread of COVID-19. The claimant is uncertain of the identity of the particular religious sect to which he belongs, but believes it might be "Liberal Christians." The claimant also asserts a health issue that would not prevent him from wearing a mask and that would not prevent him from performing work. The claimant asserts the employer should have accommodated his refusal to wear the mask by assigning him work that would allow him to work in isolation. The claimant asserts that the employer's mask requirement was a change in the conditions of the employment. The claimant bases his argument of a religious exemption to wearing the mask on the Civil Rights Act of 1964 and a provision of a November 2020 Public Health Disaster Proclamation issued by Governor Reynolds. In light of the employer's mask protocol and the claimant's refusal to comply, the claimant did not return to work. The claimant has continued off work ever since.

The claimant asserts that he recently commenced applying for construction jobs because he believes such employment would not require him to wear a mask. However, the claimant is unable to name a single prospective employer.

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(1), (3) and (10) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

...

(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code section 96.4(3).

...

(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.

Iowa Code section 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

The evidence in the record establishes that the claimant was off work due to illness and on a leave of absence during the period of July 13, 2020 until July 24, 2020. For these reasons, the

claimant was neither able to work nor available for work during the two benefit weeks between July 12, 2020 and July 25, 2020.

The weight of evidence establishes that since the benefit week that began July 26, 2020, the claimant has continued to be voluntarily unemployed and unavailable for work due his refusal to wear a mask in the workplace to assist in preventing the spread of COVID-19, an illness that has claimed the lives of more than 380,000 Americans, including more than 4,000 Iowans. The employer's mask requirement was and is a reasonable safety precaution in place to lower the risk of COVID-19 infection in the workplace. The Civil Rights Act of 1964 includes protection against discrimination based on religion. However, there is no indication that the employer's mask requirement discriminated on the basis of religion. The claimant asserts that two provisions of the Governor's November 16, 2020 Proclamation of Disaster Emergency exempts him from wearing a mask and cites two provision. The first pertains to "Any person with a medical condition or disability that prevents wearing a mask or other face covering." The claimant presented insufficient evidence to establish that he has a medical condition or disability that prevents wearing a mask or other face covering. The second provision pertains to "Any person giving a religious ... presentation or performance for an audience" and clearly does not apply to the claimant's employment circumstances. Claimant's inchoate assertion of a religious basis for refusing to wear a mask is dubious.

DECISION:

The October 19, 2020, reference 01, decision is affirmed. The claimant has not met the availability requirement since establishing his claim for benefits and is not eligible for benefits for the period beginning July 12, 2020.

This matter is **remanded** to the Benefits Bureau for a decision regarding the claimant's separation from the employment on or about July 24, 2020.



James E. Timberland
Administrative Law Judge

February 1, 2021
Decision Dated and Mailed

jet/kmj

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>.