

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**ROBERT J QUINN**  
Claimant

**SWIFT PORK COMPANY**  
Employer

**APPEAL 20A-UI-05218-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/29/20**  
**Claimant: Appellant (1)**

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Iowa Admin. Code r. 871-24.23(10 – Leave of Absence  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

On June 3, 2020, Robert Quinn (claimant/appellant) filed an appeal from the May 29, 2020 (reference 03) unemployment insurance decision that denied benefits.

A telephone hearing was held on June 29, 2020. The parties were properly notified of the hearing. The claimant participated personally. Swift Pork Company (employer/respondent) participated by Henry Bran, assistant HR manager.

Official notice was taken of the administrative record.

**ISSUES:**

- I. Is the claimant able to and available for work?
- II. Is the claimant on an approved leave of absence?
- III. Was the claimant overpaid benefits?
- IV. Is the claimant eligible for Federal Pandemic Unemployment Compensation?

**FINDINGS OF FACT:**

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

Claimant worked for employer as a full-time general labor. Claimant's first day of employment was November 25, 2019. Claimant is still employed in this position. Claimant absented himself from work beginning March 28, 2020 and continuing until June 16, 2020. This was not an approved leave of absence. However, claimant continued to check in with employer during this time, and employer did not discharge claimant. Neither did claimant formally resign.

Claimant took the leave of absence because his fiancée has a medical condition which would make exposure to COVID-19 likely fatal for her. Claimant feared he would come in contact with

COVID-19 at work. There were some precautionary measures in place, including temperature checks; installation of hand sanitizer stations; and alternative cafeteria areas to avoid crowding. Claimant did not often come into close contact with coworkers as part of his job duties, as he worked in the loading dock area. However, claimant was still concerned about how often he came into contact with coworkers, including in the crowded locker room area. Employer had not mandated all employees wear masks, either. Several employees did test positive for COVID-19 around the beginning of April 2020.

Claimant did not request an accommodation or other changes in his working conditions prior to taking the leave of absence. He was allowed to wear a mask while working. Claimant did not provide a doctors note regarding his leave of absence until the day he returned to work, June 16, 2020. Claimant himself was not ill and did not have any health conditions making him particularly susceptible to COVID-19.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$481.00 for a total of eight weeks, from the benefit week ending April 4, 2020 and continuing through the benefit week ending May 23, 2020. The total amount of benefits paid to date is \$3,848.00.

Claimant has also received Federal Pandemic Unemployment Compensation in the amount of \$600.00 for a total of eight weeks, from the benefit week ending April 4, 2020 and continuing through the benefit week ending May 23, 2020. Claimant has received FPUC benefits in the amount of \$4,800.00.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the May 29, 2020 (reference 03) unemployment insurance decision that denied benefits is **AFFIRMED**.

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. 871-24.23(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.

Claimant was essentially on a leave of absence beginning March 28 and continuing until June 16, 2020. While the administrative law judge understands claimant's reasons for taking this leave of absence, that does not change the he made himself unavailable for work during this time. As such, he is not eligible for benefits.

While this decision denies regular unemployment insurance benefits, the administrative law judge wishes to note that claimant may well be eligible for Pandemic Unemployment Assistance (PUA). Information on PUA and how to apply is set forth below.

Iowa Code section 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$481.00 for a total of eight weeks, from the benefit week ending April 4, 2020 and continuing through the benefit week ending May 23, 2020. The total amount of benefits paid to date is \$3,848.00.

Because the administrative law judge affirms the denial of benefits, claimant has been overpaid benefits in the amount of \$3,848.99. Benefits shall be recovered. The charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund.

PL116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

(f) Fraud and Overpayments

(2) Repayment.--In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

Claimant has also received Federal Pandemic Unemployment Compensation in the amount of \$600.00 for a total of eight weeks, from the benefit week ending April 4, 2020 and continuing through the benefit week ending May 23, 2020. Claimant has received FPUC benefits in the amount of \$4,800.00.

Because the claimant is disqualified from receiving regular unemployment insurance (UI) benefits, he is also disqualified from receiving FPUC benefits. Claimant has therefore been overpaid FPUC benefits in the amount of \$4,800.00. Claimant is required to repay those benefits.

**DECISION:**

The May 29, 2020 (reference 03) unemployment insurance decision that denied benefits is AFFIRMED.

Claimant has been overpaid benefits in the amount of \$3,848.99. Benefits shall be recovered. The charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund.

Claimant has been overpaid FPUC benefits in the amount of \$4,800.00. Claimant is required to repay those benefits.



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

July 9, 2020  
Decision Dated and Mailed

abd/scn

***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 currently 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>.