

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JONATHAN Y LUKONGO**  
Claimant

**TYSON FRESH MEATS INC**  
Employer

**APPEAL 21R-UI-07254-DZ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/23/20**  
**Claimant: Appellant (4)**

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Iowa Code § 96.19(38) – Total and Partial Unemployment  
Iowa Code §96.4(3) – Able to and Available for Work  
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

**STATEMENT OF THE CASE:**

Jonathan Y Lukongo, the claimant/appellant, filed an appeal from the November 6, 2020, (reference 01) unemployment insurance decision that denied benefits. After due notice, a hearing was scheduled for January 13, 2021. Mr. Lukongo did not provide a telephone number at which he could be reached for the scheduled hearing. No hearing was held. Mr. Lukongo's appeal was dismissed in Appeal Number 20A-UI-14587-DZ-T, dated February 1, 2021.

Mr. Lukongo appealed the administrative law judge's decision to the Employment Appeal Board (EAB). The EAB sent the matter back to Iowa Workforce Development Appeals Bureau for another hearing before an administrative law judge.

The parties were properly notified of the new hearing date and time. A telephone hearing was held on May 19, 2021. Mr. Lukongo participated and testified. The employer registered for the hearing but did not respond at the telephone number it provided at the time the hearing was scheduled to begin.

**ISSUES:**

Is Mr. Lukongo partially unemployed and able to and available for work?  
If so, is the employer's account subject to charge?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Lukongo began working for the employer November 26, 2018. He works as a full-time production worker.

In March 2020, the United States declared a public health emergency because of the COVID-19 pandemic. In August 2020, Mr. Lukongo began experiencing COVID-19 symptoms. He was tested for COVID-19 and tested negative. Mr. Lukongo continued to experience symptoms. Many of Mr. Lukongo's co-workers, who he was in close proximity to, also experienced COVID-

19 and many tested positive for COVID-19. Mr. Lukongo stayed home from work beginning August 2020 because he continued to experience COVID-19 symptoms. Mr. Lukongo was rehired by the employer as of November 30, 2020.

In January 2021, Mr. Lukongo began experiencing COVID-19 symptoms again. He was tested for COVID-19 again and tested positive. On advice of his doctor, Mr. Lukongo self-quarantined for 14 days. Mr. Lukongo returned to work after the 14 days.

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

For the reasons that follow, the administrative law judge concludes that Mr. Lukongo is not able to and available for work from August 23, 2020 through November 29, 2020 and from January 10, 2021 through January 23, 2021.

Iowa Code § 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 Code § 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.

Iowa Admin. Code r. 871-24.23 (1) and (26) provide:

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.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Iowa Code section 96.7(2)a(2)(a) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the 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. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

In this case, Mr. Lukongo was sick and not able to work from August 23, 2020 through November 29, 2020 and again from January 10, 2021 through January 23, 2021 after he had tested positive for COVID-19. Since Mr. Lukongo was not able to work from August 23, 2020 through November 29, 2020 and again from January 10, 2021 through January 23, 2021, regular, state-funded unemployment insurance benefits are denied during these time periods.

Even though Mr. Lukongo is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136 during these time periods. 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 up to 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 November 6, 2020, (reference 01) unemployment insurance decision is modified in favor of Mr. Lukongo. Mr. Lukongo was not able to and available for work from August 23, 2020 through November 29, 2020 and again from January 10, 2021 through January 23, 2021. Benefits are

denied during these time periods. Benefits are otherwise allowed, provided Mr. Lukongo is otherwise eligible.



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Daniel Zeno  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

May 27, 2021  
Decision Dated and Mailed

dz/ol

**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 you were or you are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA) benefits. **You must apply for PUA benefits 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've received so far.**
- Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs, including the PUA program, effective June 12, 2021. **However, you can still apply for PUA benefits at the link above.**