

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES C NGUEN

Claimant

APPEAL 20A-UI-10020-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 04/12/20

Claimant: Appellant (1/R)

Iowa Code § 96.4-3 – Able and Available
871 IAC 24.23(10) – Voluntary Leave of Absence

STATEMENT OF THE CASE:

James Nguen (claimant) appealed a representative's August 19, 2020, decision (reference 02) that concluded ineligibility to receive unemployment insurance benefits as of April 12, 2020, because a leave of absence was granted by Swift Pork Company (employer) at the claimant's request. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 6, 2020. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing.

The claimant offered and Exhibits A1 through 8 were received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant is available for work and whether the claimant was on an approved leave of absence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 29, 2019, as a full-time ham trimmer. The claimant's wife also worked for the employer. On April 16, 2020, the claimant's wife tested positive for Covid-19. The claimant had to quarantine and could not work. On April 20, 2020, the claimant's son tested positive for Covid-19. On April 25, 2020, the claimant tested positive for Covid-19. On April 26, 2020, the claimant's daughter tested positive for Covid-19.

On or about April 27, 2020, the Iowa Health Department contacted the claimant and discussed the situation that all members of the claimant's family had contracted the coronavirus. The Health Department told the family they could not leave the home, even to purchase food. The family was quarantined together and people brought them necessities for a period.

On June 30, 2020, doctor's quarantined the claimant and his wife through July 14, 2020. The claimant tried to return to work but the employer wanted a doctor's note to cover every day of his absence. The claimant has experienced chest and joint pain since contracting the virus and does not feel well enough to work.

The claimant filed for unemployment insurance benefits with an effective date of April 12, 2020. His weekly benefit amount was determined to be \$591.00. The claimant received benefits of \$591.00 per week from April 19, 2020, to the week ending July 18, 2020. This is a total of \$7,683.00 in state unemployment insurance benefits after the separation from employment. He also received \$9,600.00 in Federal Pandemic Unemployment Compensation for the thirteen-week period ending July 18, 2020.

REASONING AND CONCLUSIONS OF LAW:

Iowa Admin. Code r. 871-24.23(1) and (10) 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.

(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.

When employees request and are granted a leave of absence, they are considered to be voluntarily unemployed. The claimant requested a medical leave of absence and the employer granted the request. The claimant is considered to be voluntarily unemployed, or unavailable for work, during the period of the medical leave of absence and is not eligible to receive unemployment insurance benefits.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When employees are unable to perform work due to a medical condition, they are considered to be unavailable for work. The claimant continues to be sick after contracting the virus and is considered to be unavailable for work. Benefits are denied as of April 12, 2020.

Even though the claimant 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. 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. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

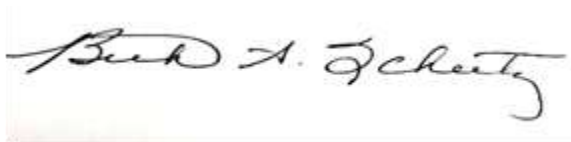
The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

DECISION:

The representative's August 19, 2020, decision (reference 02) is affirmed. The claimant is considered to be unavailable for work and is not eligible to receive unemployment insurance benefits from April 12, 2020

The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify 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 under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



Beth A. Scheetz
Administrative Law Judge

October 8, 2020
Decision Dated and Mailed

bas/sam