

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NAI M LAY
Claimant

SWIFT PORK COMPANY
Employer

APPEAL 20A-UI-08208-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/26/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(10) – Able & Available – Availability Disqualifications
Iowa Code § 96.6(2) - Timeliness of Protest

STATEMENT OF THE CASE:

On July 11, 2020, the claimant filed an appeal from the June 15, 2020, (reference 01) unemployment insurance decision that denied benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on August 25, 2020. Claimant participated personally and through an interpreter with CTS Language Link. Thla Sui observed. Employer did not register for the hearing and did not participate. Department Exhibit 1 was received.

ISSUES:

Is the appeal timely?
Is the claimant able to and available for work?
Is the claimant on a voluntary leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On June 15, 2020, Iowa Workforce Development mailed a reference 01 unemployment insurance decision to claimant's last address of record. Claimant received the decision on June 18, 2020. The decision states that an appeal is due by June 25, 2020. Claimant can read very little English. Claimant asked a community resource center to help him with the decision. By the time claimant had an appointment, the deadline to file an appeal had passed. With the help of the community resource center, claimant filed an appeal on July 11, 2020

Claimant began working for employer on July 22, 2019. Claimant works for employer as a full-time production worker.

In March 2020, the United States declared a public health emergency because of the COVID 19 pandemic.

Claimant's last day of work was March 27, 2020. Claimant was ill with symptoms of COVID 19 and his doctor took him off work for a month. Claimant was unable to get tested at that time.

Claimant was off work on April 27 and 28, 2020, due to hand pain. Claimant went to work for three days. Then on May 3, 2020, claimant still felt ill so he went to the doctor and was tested for COVID 19. The test came back negative. Still, claimant's doctor instructed him to quarantine until May 17, 2020. Claimant did not recover from his COVID 19 symptoms and has not been back to see the doctor.

On July 21, 2020, Iowa Workforce Development issued a decision allowing claimant Pandemic Unemployment Assistance Benefits (PUA) effective June 14, 2020.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is.

Iowa Code § 96.6(2) provides, in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

In this case, claimant is able to read very little English. After receiving the decision, claimant made an appointment with a community resource center that could assist him with interpreting the decision. By the time claimant had his appointment, the appeal deadline had passed. After his appointment, claimant filed the appeal with assistance on July 11, 2020. Because claimant did not understand the decision prior to his appointment, he did not have reasonable notice that he had been denied benefits. Claimant filed the appeal after receiving such notice. The appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective April 26, 2020.

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.

Here, claimant was on a leave of absence due to an illness. Claimant has not established he is able to and available for work, even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20. Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits from the effective date of the claim.

Even though claimant is not eligible for regular unemployment insurance benefits under state law, Iowa Workforce Development has found claimant eligible for federally funded PUA benefits effective June 14, 2020. Claimant can appeal the July 21, 2020, decision allowing him PUA benefits or request that the allowance be backdated.

DECISION:

The June 15, 2020, (reference 01) unemployment insurance decision is affirmed. The appeal is timely. The claimant is not available for work effective April 26, 2020, and regular, state-funded unemployment insurance benefits are denied. Claimant is eligible for PUA benefits effective June 14, 2020, and this decision will have no negative affect on that allowance of benefits.



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

August 28, 2020
Decision Dated and Mailed

cal/mh

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.
- A decision has been issued allowing you PUA benefits effective June 14, 2020. You may appeal that decision or request that your allowance be backdated. **If you do not appeal the July 21, 2020, decision allowing you PUA benefits, or if the allowance is not backdated, the benefits you received prior to June 14, 2020, may be deducted from your PUA benefits.**