

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KHIN M HTAY
Claimant

SWIFT PORK COMPANY
Employer

APPEAL 20A-UI-08542-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/19/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

On July 20, 2020, the claimant filed an appeal from the June 22, 2020, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 1, 2020. Claimant participated personally and through an interpreter with CTS Language Link. Employer did not register for the hearing and did not participate. Department Exhibit 1 was received. Claimant's Exhibit A was received.

ISSUES:

Is the appeal timely?
Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On June 22, 2020, Iowa Workforce Development mailed a reference 01 unemployment insurance decision to claimant's last address of record. Claimant received the decision sometime thereafter. The decision states that an appeal is due by July 2, 2020. Claimant can read very little English. Claimant asked a community resource center to help her 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 20, 2020.

Claimant began working for employer on August 26, 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 was off work for the five weeks ending May 23, 2020. Claimant had symptoms of COVID 19. Although claimant tested negative, her cough continued. Claimant's doctor released her to return to work on June 1, 2020, and she did return to work on that date.

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 her with interpreting the decision. By the time claimant had her appointment, the appeal deadline had passed. After the appointment, claimant filed the appeal with assistance on July 20, 2020. Because claimant did not understand the decision prior to her appointment, she did not have reasonable notice that she 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 19, 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 she 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, the claimant 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.

DECISION:

The June 22, 2020, (reference 01) unemployment insurance decision is affirmed. The appeal is timely. The claimant is not available for work effective April 19, 2020, and regular, state-funded unemployment insurance benefits are denied. Claimant may be eligible for PUA benefits, but will need to apply for those benefits by following the instructions below.



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

September 2, 2020
Decision Dated and Mailed

cal/scn

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>. **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.**