

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CYRUS N TEAGUE

Claimant

APPEAL NO. 20A-UI-11525-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 05/17/20

Claimant: Appellant (5)

Iowa Code § 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 2, 2020, reference 01, decision that denied benefits for the period beginning May 17, 2020, based on the deputy's conclusion that the claimant was on a leave of absence that he requested and that the employer approved, was voluntarily unemployed, and was unavailable for work. After due notice was issued, a hearing was held on November 12, 2020. Claimant participated. The employer did not provide a telephone number for the appeal hearing and did not participate. Exhibits A and B were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

ISSUE:

Whether the claimant was able to and available for work during the week of May 17-23, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is employed by Swift Pork Company, also known as JBS, as a full-time production laborer. The claimant's regular work hours are 5:15 a.m. to 2:45 p.m. Monday through Saturday. On May 12, 2020, the claimant left work at a time when he was experiencing illness symptoms consistent with COVID-19. The claimant went to a walk-in clinic and was tested for COVID-19. On May 15, 2020, the claimant received his COVID-19 test result, which indicated the claimant was positive for COVID-19. The claimant continued to be significantly ill thereafter. On Wednesday, May 27, 2020, the claimant returned to the full-time employment. The employer paid the claimant short-term disability benefits that amounted to \$200.00 for the week that ended May 16, 2020 and \$280.00 for the week that ended May 23, 2020.

The claimant establishes an original claim for regular unemployment insurance benefits that was effective May 17, 2020. The claimant made a weekly claim for the week that ended May 23, 2020 and then discontinued his claim. The claimant received unemployment insurance benefits for the week that ended May 23, 2020. The claimant did not report the \$280.00 in short-term disability benefits he received for the week that ended May 23, 2020.

Though the claimant asserts that he filed an application for Pandemic Unemployment Assistance (PUA) benefits, a careful review of Agency records indicates that claimant has not in fact filed an application for PUA benefits.

REASONING AND CONCLUSIONS OF LAW:

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. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(1) provides:

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.

The claimant was unable to work due to COVID-19 illness during the benefit week that ended May 23, 2020 and therefore did not meet the availability requirement during that week, even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20. The claimant is not eligible for regular, state-funded unemployment insurance benefits for the week that ended May 23, 2020.

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 September 2, 2020, reference 01, is affirmed with regard to the claimant not being able to work or available for work during the week that ended May 23, 2020. However, the inability to work and the unavailability for work was due to illness, not because the claimant requested a leave of absence. Accordingly, the claimant is not eligible for regular, state-funded unemployment insurance benefits for the week of May 17-23, 2020.



James E. Timberland
Administrative Law Judge

November 19, 2020
Decision Dated and Mailed

jet/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 have received.**