

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**GERARDO LEYVA**  
Claimant

**MARSHALLTOWN COMMUNITY SCHOOL  
DISTRICT**  
Employer

**APPEAL 16A-UI-13109-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/13/16  
Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions  
871 IAC 24.23(26) – Same Hours and Wages  
871 IAC 23.43(4)- Supplemental Employment

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the December 2, 2016, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 19, 2017. The claimant participated personally, and through a CTS Language Link interpreter in Spanish. The claimant was represented by Andy Giller, attorney at law. Ms. Miriam Leyva, wife of the claimant, attended the hearing as an observer. The employer did not register a phone number with the Appeals Bureau and did not participate. Claimant Exhibits 1 through 6 were admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Is the claimant able and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant's base period consists of two employers, Swift Pork Company and Marshalltown Community School District. The claimant has worked for over a year with Marshalltown Community School District, as a part-time driver, working three hours for five days a week. The claimant's hours have been consistent and are set, with the exception of summer 2016, while school was out.

The claimant has worked concurrently at Swift Pork Company, full-time, until November 1, 2016. The claimant has been placed on an indefinite leave of absence from Swift Pork Company due to a work-related injury (incurred in 2014). For a period of time, the employer accommodated his medical restrictions associated with the injury but discontinued effective November 1, 2016.

(The claimant's employment as a driver for Marshalltown Community School District has not been impacted by his medical restrictions.)

The administrative records reflect that employer, Swift Pork Company, did not protest benefits, and therefore, only the decision at hand is affecting the claimant's eligibility for unemployment insurance benefits.

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

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work. Benefits are allowed.

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".

The claimant is able to and available for work. He filed for benefits because his regular employer, Swift Pork Company, does not have work available, and his supplemental employment as a driver for Marshalltown Community School District does not disqualify him from receiving unemployment insurance benefits. The Agency relied on 871 IAC 24.23(26). However, this section does not apply to the facts in this case where the claimant is applying for benefits after he was laid off (or on a leave of absence) by his regular employer. It should be used when the claimant applies for partial unemployment insurance benefits from a base-period employer who continues to employ the claimant for the same number of hours and wages as established at the time of hire. Instead, this case is governed by 871 IAC 23.43(4)a, which deals with a situation where an individual has supplemental employment in addition to his regular employment.

Iowa Admin. Code r. 871-23.43(4)a provides in part:

(4) Supplemental employment.

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges....

The claimant is eligible for benefits, and this employer's account is exempt from charge for benefits paid to the claimant as long as the employer provides the claimant with the same employment as provided during the base period.

**DECISION:**

The unemployment insurance decision dated December 2, 2016, (reference 01), is reversed. The claimant is eligible to receive unemployment insurance benefits, provided he is otherwise qualified. Any benefits claimed and withheld on this basis shall be paid. This employer's account is exempt from charge for benefits paid to the claimant.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

jlb/rvs