

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROMBERT PAUL
Claimant

SWIFT PORK COMPANY
Employer

APPEAL NO. 23A-UI-10005-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/10/23
Claimant: Appellant (2R)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

On October 19, 2023, Rombert Paul (claimant) filed a timely appeal from the October 17, 2023 (reference 02) decision that denied benefits for the period beginning October 15, 2023, based on the deputy's conclusion that the claimant requested and was granted a leave of absence from Swift Pork Company, was voluntarily unemployed, and was not available for work. After due notice was issued, a hearing was held on November 7, 2023. Claimant participated. The employer did not comply with the hearing notice instructions to provide a telephone number for the hearing and did not participate. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, WAGE-A, the SIDES protest and IowaWORKS.gov.

ISSUES:

Whether the claimant was able to work and available for work for the period beginning October 15, 2023.

Whether the claimant has been on a leave of absence from Swift Pork Company since October 15, 2023.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Rombert Paul (claimant) established an original claim for benefits that was effective September 10, 2023. The claimant has thus far made weekly claims for the eight consecutive weeks between September 10, 2023 and November 4, 2023.

The claimant's base period employers include Swift Pork Company, otherwise known as JBS, and Nounou Logistics, L.L.C. The claimant last performed work for Swift/JBS on May 26, 2022 according to that employer's SIDES protest. The claimant asserts the last day worked was in June 2022. After the claimant worked his last day at Swift/JBS, the claimant worked for an additional employer, Nounou Logistics, L.L.C. during the fourth quarter of 2022. At no time since the claimant established the September 10, 2023, more than a year after the claimant last performed work for Swift, has the claimant been on a leave of absence from Swift/JBS. During

each of the weeks since the claimant established the claim for benefits the claimant has met the reemployment activities requirement through a combination of job applications and other reemployment activities. The claimant has continued to be physically and mentally able to work.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4(3)(a) provides as follows:

96.4 Required findings. An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. a. 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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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(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.

The evidence indicates the claimant has been able to work and available for work during each benefit week since he established the claim for benefits. At no time since the claimant established the September 10, 2023 original claim has the claimant been on a leave of absence from Swift Pork Company/JBS, for which he last worked more than a year before the

unemployment insurance claim. The claimant is eligible for benefits, provided he meets all other eligibility requirements.

DECISION:

The October 17, 2023 (reference 02) is REVERSED. The claimant has been able to work and available for work during each benefit week since he established the claim for benefits. At no time since the claimant established the September 10, 2023 original claim has the claimant been on a leave of absence from Swift Pork Company/JBS, for which he last worked more than a year before the unemployment insurance claim. The claimant is eligible for benefits, provided he meets all other eligibility requirements.

REMAND:

This matter is REMANDED to Iowa Workforce Development Benefits Bureau for a decision regarding the claimant's May 26, 2023 separation from Swift Pork Company/JBS or for a 10X weekly benefit amount requalification decision.



James E. Timberland
Administrative Law Judge

November 13, 2023
Decision Dated and Mailed

JET/jkb

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Ave
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Ave
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.