

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

INES S RODRIGUEZ RAMIREZ
Claimant

SWIFT PORK COMPANY
Employer

APPEAL NO. 21A-UI-18730-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/06/21
Claimant: Appellant (1R)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant, Ines Rodriguez Ramirez, filed a timely appeal from the August 12, 2021, reference 01, decision that denied benefits effective June 6, 2021, based on the deputy's conclusion that the claimant was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on October 14, 2021. Claimant participated. The employer's named representative, Sofia Solis, was not available at the registered number and did not participate in the hearing. Exhibits A, B and 1 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

ISSUES:

Whether the claimant was able to work and available for work for the period beginning June 6, 2021.

Whether the claimant was partially and/or temporarily unemployed for the period beginning June 6, 2021.

Whether the employer's account may be charged for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant, Ines Rodriguez Ramirez, established an original claim for benefits that was effective June 6, 2021. The claimant is a native Spanish speaker. Iowa Workforce Development made a Spanish version of the unemployment insurance application available to the claimant, but the claimant completed an English version instead. At the end of the applications steps, the confirmation would have told the claimant that she was required to make weekly claims in order to receive weekly benefits. The claimant does not remember seeing that information. The claimant made just one weekly claim. That single weekly claim was for the week that ended July 10, 2021.

At the time the claimant established the June 6, 2021 original claim, the claimant was attached to a full-time production job with Swift Pork Company/JBS, but was off work due to pregnancy-related medical restrictions. The claimant last performed work for the employer on April 6,

2021. Up to that time, the claimant worked as a packer. The work required standing for extended periods and extensive walking. On April 6, 2021, the claimant presented the employer with a medical restriction document. The document restricted the claimant from standing for extended periods and from walking for extended periods. The medical restriction document stated the claimant should have a desk job. The claimant was at that time pregnant and nearing the end of the second trimester of her pregnancy. The claimant was experiencing ongoing sciatic pain that extended into her left leg. The claimant was unable to perform her regular packer work duties with the medical restrictions her health care provider put in place. The restrictions were to remain in place for the remainder of the claimant's pregnancy. The claimant observed that some employees were assigned check employee temperatures. The claimant asked about performing that type of work, but the employer said those positions were full. The claimant also asked if she could clean tables, but the employer said those positions were full. The employer did not have work that would meet the claimant's medical restrictions.

Effective April 6, 2021, the claimant commenced a leave of absence that the employer characterized as leave under the Family and Medical Leave Act (FMLA). The claimant remained on an approved leave of absence until July 13, 2021, when she gave birth to her child by Caesarian section.

On or about July 13, 2021, the employer called the claimant to discuss the claimant's return to the employment. The employer wanted the claimant to return to work at that time and asserted that the FMLA leave period had expired. The claimant told the employer that the claimant's doctor wanted her to remain off work for another month.

The claimant asserts that after she recovered from delivering her baby, everyone in the household succumbed to COVID-19. The claimant is unable to provide dates pertaining to the illness.

The claimant remained at home, did not search for new employment, and waited to return to the employer. At the end of September 2021, the claimant attempted to return to the employment. However the employer told the claimant that the employer deemed the employment terminated.

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 provides, in pertinent part, as follows:

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.

...

(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.

...

(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

...

(27) Failure to report on a claim that a claimant made any effort to find employment will make a claimant ineligible for benefits during the period. Mere registration at the workforce development center does not establish that a claimant is able and available for suitable work. It is essential that such claimant must actively and earnestly seek work.

...

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

If a claimant individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

Iowa Administrative Code rule 871-24.2.(1)(g) provides as follows:

(g). No continued claim for benefits shall be allowed until the individual claiming benefits has completed a continued claim or claimed benefits as otherwise directed by the department.

(1) The weekly continued claim shall be transmitted not earlier than 8 a.m on the Sunday following the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on Friday following the weekly reporting period.

The claimant has not been available for work within the meaning of the law since she established the claim for benefits that was effective June 6, 2021. At the time claimant established her claim for benefits, she was under a doctor's care, she had medical restrictions that prevented her from working, she had requested and been granted a leave of absence. The evidence indicates the claimant continued to be unavailable for work up to the date of her child's birth and beyond. The claimant needed to recover from the July 13, 2021 c-section delivery. The claimant had a brand new bay to attend to. The claimant did not seek additional work. The claimant did not make weekly claims from the start of her claim. Her claim lapsed. The claimant never reactivated the claim. For these reasons also, the claimant cannot be considered for benefits for the period beginning June 6, 2021.

Benefits are denied effective June 6, 2021. The able and available disqualification was ongoing at the time of the appeal hearing.

DECISION:

The August 12, 2021, reference 01, decision is affirmed. The claimant has not been available for work since establishing the June 6, 2021 original claim. Benefits are denied effective June 6, 2021. The able and available disqualification was ongoing at the time of the appeal hearing.

REMAND:

This matter is remanded for a decision regarding the separation.



James E. Timberland
Administrative Law Judge

November 29, 2021
Decision Dated and Mailed

jet/kmj

Note to Claimant:

This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits, but who are unemployed for reasons related to COVID-19, may qualify for Pandemic Unemployment Assistance (PUA). **You will need to**

apply for PUA to determine your eligibility under the program. Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.