

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

KHAING A TUN

Claimant

and

SWIFT PORK COMPANY

Employer

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HEARING NUMBER: 20B-UI-08164

**EMPLOYMENT APPEAL BOARD
DECISION NUNC PRO TUNC**

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.4-3, 96.6-2

D E C I S I O N

The Board recognized a clerical error. The date stamp '2015' should read 2020.

UNEMPLOYMENT BENEFITS ARE DENIED

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED**.

The Board notes that the able and available requirement is not concerned with *why* someone is unavailable. A person who is too ill to work because of a flu is not available, and so too a person too ill to work because of the Coronavirus. Someone who is unavailable for work during a given week is unavailable no matter how good the cause for being unavailable, or whether or not the cause is attributable to the Pandemic. This being the case we do **not** adjudicate today whether or not any of the Claimant's unavailability was due to COVID. So long as the Claimant does not fall within an exception for partially unemployed workers, or workers in approved training (and Claimant does not) the reason for the unavailability is not important. This means our decision today does **not** adjudicate a claim for Pandemic Unemployment Assistance. That law provides benefits to persons who are unavailable for work due to certain pandemic related reasons, or who lost work as a direct result of the Pandemic. Such persons may be able to collect PUA during any week this situation persists, going back to February 8, 2020 (for a maximum of 39 weeks). The federal Department of Labor has instructed that **eligible persons would include:**

- a) The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis. ...
- b) A member of the individual's household has been diagnosed with COVID-19. ...
- c) The individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19. ...
- d) A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work....
- e) The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency. ...
- f) The individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19. ...
- g) The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency. ...
- h) The individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19. ...
- i)The individual has to quit his or her job as a direct result of COVID-19. ...
- j)The individual's place of employment is closed as a direct result of the COVID-19 public health emergency. ...
- k) The individual meets any additional criteria established by the Secretary for unemployment assistance under this section....

UIPL 16-20, Attachment 1.

(https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20_Attachment_1.pdf).

It is further our understanding that federal law requires all PUA claims to be backdated to as early as February 8, depending on when the applicant's COVID-related unavailability or job loss began. The upshot is that if Claimant can make the necessary PUA showing Claimant may very well be eligible for PUA for any qualifying week. **Our ruling today is no bar to PUA.**

Should the Claimant wish to apply for PUA, and the information on how to do so is found at:
<https://www.iowaworkforcedevelopment.gov/pua-information> .

Finally, the Board Chair and Vice Chair would comment that should the Claimant be assessed an overpayment of Federal Pandemic Unemployment Compensation (FPUC) benefits, the Claimant may be eligible for a waiver. To find out, the Claimant can appeal any FPUC overpayment received from the Iowa Workforce Development, Benefits Bureau, and request a waiver of FPUC.

Ashley R. Koopmans

James M. Strohman

Myron R. Linn

RRA/fnv