

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MA T KYI
Claimant

SWIFT PORK COMPANY
Employer

APPEAL 20A-UI-06969-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

On June 24, 2020, Ma T. Kyi (claimant) filed an appeal from the June 15, 2020, reference 01, unemployment insurance decision that denied benefits effective March 22, 2020, based upon the determination she was not able to and available for work. After due notice was issued, a telephone hearing was held on July 31, 2020, and consolidated with the hearing for appeal 20A-UI-06945. The claimant participated, and she was represented by Mayra Hernandez Garcia. The employer did not respond to the hearing notice and did not participate. Rachel (employee number 4116) from CTS Language Link provided Burmese interpretation for the hearing. No exhibits were offered into the record. The administrative law judge took official notice of the administrative record, specifically the claimant's claim history.

ISSUE:

Was the claimant able to and available for work effective March 22, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer full-time as a Production Worker on May 22, 2019. The claimant was hired to work a rotating schedule: eight-hour days for two weeks and then nine-hour days for two weeks. The claimant's husband has remained in the same employment since that time and they have split child care duties without issue. The claimant worked her normal schedule the week of March 22.

After her shift on March 28, the claimant went to her doctor, as she did not feel well. The doctor tested her for COVID-19 and the test came back negative. The claimant still feared for her safety and the safety of her two children. She told the employer she could no longer work nine-hour shifts due to child care, despite the fact, there had been no changes to her previous child care arrangement. The employer granted the claimant an indefinite leave of absence.

At the beginning of June, the employer met with the claimant and offered her eight-hour shifts instead of the nine-hour shifts. The claimant accepted the offer and returned to work on June 16.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work effective March 22, 2020. Regular unemployment insurance benefits are denied.

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)(j) provides:

Benefit 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.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

Iowa Admin. Code r. 871-24.23 provides, in relevant part:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

...

(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

...

(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.

...

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

An individual claiming benefits has the burden to prove that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The claimant worked to the point she was removed from the labor market during the week of March 22. Effective March 23, the claimant was on an approved leave of absence. She is now back to working full time. The claimant is not able to and available for work effective March 22. Regular unemployment insurance benefits are denied.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The June 15, 2020, reference 01, unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective March 22, 2020. Regular unemployment insurance benefits are denied.

Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the CARES Act. 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 in FPUC. This decision does not address whether the claimant is eligible for PUA. For a decision on such eligibility, the claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.



Stephanie R. Callahan
Administrative Law Judge

August 13, 2020
Decision Dated and Mailed

src/sam

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 currently 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>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.