

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CARLOS R MULATILLO**  
Claimant

**SWIFT PORK COMPANY**  
Employer

**APPEAL 20A-UI-04570-AW-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 03/22/20**  
**Claimant: Appellant (4)**

Iowa Code § 96.19(38)b – Definitions – Total, partial unemployment  
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search  
Iowa Code § 96.7(2)A(2) – Charges – Same base period employment  
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the May 15, 2020 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on June 15, 2020, at 1:00 p.m. Claimant participated. Employer did not participate. No exhibits were admitted. Official notice was taken of the administrative record.

**ISSUES:**

Whether claimant is totally, partially or temporarily unemployed.  
Whether claimant is able to and available for work.  
Whether claimant is still employed at the same wage and hours.  
Whether employer's account is subject to charge.

**FINDINGS OF FACT:**

As claimant was the only witness, the administrative law judge makes the following findings of fact based solely upon claimant's testimony: Claimant is employed as a full-time production laborer with Swift Pork Company. Claimant began his employment on July 25, 2016. From March 25, 2020 until April 7, 2020, employer required claimant to take an involuntary leave of absence to quarantine, because claimant had contact with someone who tested positive for Covid-19. During this period of time, claimant was able to work and available for work. Claimant filed an initial claim for unemployment insurance benefits effective March 22, 2020; claimant's weekly benefit amount is \$518.00. Prior to March 2020, claimant worked an average of 62 – 64 hours per week. However, since March 2020, employer has reduced the number of hours that claimant is able to work. The fewest number of hours claimant has worked since March 22, 2020 is 35 per week. Claimant's rate of pay is \$20.50 per hour and time and a half pay for overtime.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was totally unemployed from March 25, 2020 to April 7, 2020; therefore, benefits are allowed for the benefit weeks ending March 28, 2020 and April 4, 2020, provided claimant is otherwise eligible. Claimant has not been unemployed since April 8, 2020; therefore, benefits are denied beginning April 5, 2020.

Iowa Code section 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

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 Code section 96.7(2)a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the 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. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

Because claimant worked less than his regular full-time hours, claimant was partially unemployed for the weeks ending March 28, 2020 and April 4, 2020. If claimant's gross earnings each week were less than his weekly benefit amount plus fifteen dollars (i.e. \$533.00), claimant is eligible for partial benefits for those two weeks subject to reporting wages earned.

While claimant has not been employed for his regular hours since April 5, 2020, he has been scheduled at least 35 hours per week, which means that he earned at least \$717.50 gross each week. Claimant earned more than his weekly benefit amount plus fifteen dollars. Therefore, claimant was not partially unemployed since April 5, 2020. Benefits are denied effective April 5, 2020.

For whatever period employer was not offering the same wages and hours as contemplated in the terms of hire, it may be liable for benefit charges to its account.

*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 due to disqualifying separations, 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>.

**DECISION:**

The May 15, 2020 (reference 01) unemployment insurance decision is modified in favor of appellant. Claimant was partially unemployed for the weeks ending March 28, 2020 and April 4, 2020 and is eligible for benefits subject to reporting his gross wages earned for each week of benefits claimant and provided claimant is otherwise eligible. Employer's account may be liable for charges for the weeks ending March 28, 2020 and April 4, 2020. Claimant was not partially unemployed since April 5, 2020. Accordingly, benefits are denied effective April 5, 2020.



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June 26, 2020  
Decision Dated and Mailed

acw/scn