

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PHILIP A LUNSFORD
Claimant

SWIFT PORK COMPANY
Employer

APPEAL 20A-UI-06831-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/24/20
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant/appellant, Philip A. Lunsford, filed an appeal from the June 18, 2020 (reference 04) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 29, 2020. The claimant participated personally. The employer, Swift Pork Company, did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing.

The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant able to work and available for work effective May 24, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was most recently employed full-time in production for Swift Pork Company. He went on a leave of absence effective February 25, 2020 before separating from employment on approximately May 24, 2020. (The issue of claimant’s separation has been detected by the Benefits Bureau).

The claimant does suffer from migraines and has been under medical care. He had planned to have sinus surgery to alleviate pain but it was postponed due to COVID-19 restrictions, which suspended non-emergency medical care. While he remains under medical care, he does not have any restrictions. He is looking for full-time work, consistent with his experience. He has not refused any offers of work.

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 96.1A, subsection 38, paragraph "b", subparagraph (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".

For an individual to be eligible to receive benefits, he must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The claimant has the burden to show he is able to work, available for work, and earnestly and actively seeking work. The unemployment insurance rules require that an individual be physically and mentally able to work in some full time gainful employment, not necessarily in the individual's customary occupation, but a job which is engaged in by others as a means of livelihood. 871 IAC 24.22(1).

In this case, the evidence establishes the claimant is able to and available for work as defined by the unemployment insurance law. The claimant is able to perform work, even if it is not the same work as he performed at Swift Pork Company. While the claimant does have issues related to migraines and sinuses, no credible evidence was presented to establish a doctor has restricted him from performing work since he opened his claim with an effective date of May 24, 2020. Accordingly, the administrative law judge concludes the claimant is able to and available for work. Benefits are allowed, provided he is otherwise eligible.

DECISION:

The unemployment insurance decision dated June 18, 2020, (reference 04) is reversed. The claimant is able and available for work effective May 24, 2020.



Jennifer L. Beckman
Administrative Law Judge
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August 5, 2020
Decision Dated and Mailed

jlb/scn