

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**THAN WIN**  
Claimant

**SWIFT PORK COMPANY**  
Employer

**APPEAL NO. 20A-UI-09680-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/12/20**  
**Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(10) – Able & Available – Availability Disqualifications  
Iowa Code § 96.19(38) – Temporary & Partial Unemployment

**STATEMENT OF THE CASE:**

Than Win filed a timely appeal from the August 5, 2020, reference 01, decision that denied benefits effective April 12, 2020, based on the deputy's conclusion that Mr. Win was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on September 28, 2020. Mr. Win participated. The employer did not provide a telephone number for the hearing and did not participate. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A. Burmese-English interpreter Tin Lwin of CTS Language Link assisted with the hearing.

**ISSUES:**

Whether Mr. Win was able to work and available for work within the meaning of the law during the period of April 12, 2020 through the benefit week that ended June 13, 2020.  
Whether Mr. Win was partially and/or temporarily unemployed within the meaning of the law during the period of April 12, 2020 through the benefit week that ended June 13, 2020.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Than Win is employed by Swift Pork Company, otherwise known as JBS, as a full-time production worker effective April 6, 2020, Mr. Win voluntarily went off work out of concern for COVID-19. Mr. Win has an infant child that is less than a year old and was concerned about potentially transmitted COVID-19 to that child or to other members of his household. At the time Mr. Win went off work, Swift/JBS had not yet implemented measures to protect employees from the spread of COVID-19. The employer did not close its production facility. In connection with going off work, Mr. Win did not request a leave of absence. Instead, he commenced calling in daily absences. While Mr. Win was off work, the employer continued to have the same, full-time work available for him. While Mr. Win was off work, he did not search for other employment and instead waited for the right time to return to the employment. While Mr. Win was off work, the employer

implemented workplace measures to hinder the spread of COVID-19. Mr. Win returned to the same full-time employment on June 22, 2020.

Ms. Win established an original claim for unemployment insurance benefits that was effective April 12, 2020. Swift/JBS is the sole base period employer. Iowa Workforce Development set Mr. Win's weekly benefit amount for regular benefits at \$591.00. Mr. Win received that amount for each of the nine weeks between April 12, 2020 and June 13, 2020. Mr. Win also received \$600.00 in Federal Pandemic Unemployment Compensation for each of the same nine weeks.

## **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(10) provides:

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

(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.

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.

Here, claimant was on a leave of absence due to his concern about potential exposure to COVID 19. Claimant has not established he was available for work within the meaning of the law during the period of April 12, 2020 through June 13, 2020, even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20. Because the employer continued to have the same work available for the claimant, the claimant cannot be deemed temporarily or partially unemployed during the period of April 12, 2020 through June 13, 2020. Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits for the period of April 12, 2020 through June 13, 2020.

Even though claimant is not eligible for regular unemployment insurance benefits under state law, the claimant may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. 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 (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed.

**DECISION:**

The August 5, 2020, reference 01, decision is affirmed. The claimant was not available for work within the meaning of the law during the period of April 12, 2020 through June 13, 2020. The claimant was not temporarily or partially unemployed during the period of April 12, 2020 through June 13, 2020. Accordingly, the claimant is not eligible for regular, state-funded unemployment insurance benefits for the period of April 12, 2020 through June 13, 2020.



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James E. Timberland  
Administrative Law Judge

September 29, 2020  
Decision Dated and Mailed

jet/scn

**NOTE TO CLAIMANT:**

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you will be required to repay the benefits you have received.**