

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MAUNG K KHAIN**

Claimant

**APPEAL 20A-UI-07907-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**

Employer

**OC: 04/19/20**

**Claimant: Appellant (1R)**

Iowa Code § 96.4-3 – Able and Available  
871 IAC 24.23(10) – Voluntary Leave of Absence

**STATEMENT OF THE CASE:**

Maung Khain (claimant) appealed a representative's June 26, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits as of April 19, 2020, because a leave of absence was granted by Swift Pork Company (employer) at the claimant's request. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 18, 2020. The claimant was represented by Mayra Hernandez Garcia, non-attorney representative, and participated personally through Ngu Ngu , interpreter. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The administrative law judge took official notice of the administrative file.

**ISSUES:**

The issue is whether the claimant is available for work and whether the claimant was on an approved leave of absence.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 25, 2016, as a full-time pulley. His wife worked for the employer, also. The claimant stopped working from April 9, 2020, through June 8, 2020. Some co-workers had symptoms of Covid-19 and he did not want to expose his children to Covid-19. His wife stopped working for the employer for some time. In addition, the claimant felt sick and thought he might have the coronavirus. He called a doctor and the doctor told him to stay home. While he was at home, he and his wife took care of their two children. The claimant returned to work after June 8, 2020.

The claimant filed for unemployment insurance benefits with an effective date of April 19, 2020. His weekly benefit amount was determined to be \$545.00. The claimant received a total of \$3,815.00 in state unemployment insurance benefits for the seven-week period ending June 6, 2020. He also received \$4,200.00 in Federal Pandemic Unemployment Compensation for the seven-week period ending June 6, 2020.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Admin. Code r. 871-24.23(1), (8), and (10) provide:

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

- (1) An individual who is ill and presently not able to perform work due to illness.
- (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.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When employees request and are granted a leave of absence, they are considered to be voluntarily unemployed. The claimant requested a leave of absence and the employer granted the request. The claimant is considered to be voluntarily unemployed, or unavailable for work, during the period of the medical leave of absence and is not eligible to receive unemployment insurance benefits.

When an employee is spending working hours caring for children, he is considered to be unavailable for work. The claimant did not have child care. He is considered to be unavailable for work. When employees are unable to perform work due to a medical condition, they are considered to be unavailable for work. The claimant was ill and caring for children while on his leave of absence. The claimant is not eligible for regular unemployment insurance benefits as of April 19, 2020.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, he 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. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

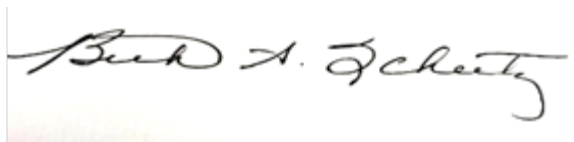
The issue of the overpayment of unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded for determination.

## DECISION:

The representative's June 26, 2020, decision (reference 01) is affirmed. The claimant is considered to be unavailable for work and is not eligible to receive unemployment insurance benefits from April 19, 2020.

The issue of the overpayment of unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded for determination.

*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>.

A handwritten signature in black ink, reading "Beth A. Scheetz", is positioned above a horizontal line.

Beth A. Scheetz  
Administrative Law Judge

August 21, 2020  
Decision Dated and Mailed

bas/scn