

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOSE A CASTANON
Claimant

APPEAL NO. 16A-UI-02668-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 12/20/15
Claimant: Appellant (1)**

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 25, 2016 reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on March 28, 2016. Claimant participated personally. Interpretive services were provided by CTS Language Link.

ISSUE:

The issue in this matter is whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant works for Iowa Erosion control as he has since 2004. The company shuts down its business during the winter months and opens up again the next spring. Every year claimant returns to family in Mexico while he is laid off over the winter. He is then called by employer a few days before he is to return to work, and claimant comes back.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23(13), (20) and (25) provide:

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

(13) If a claimant is visiting in another area and is not in the labor market.

(20) Where availability for work is unduly limited because the claimant is waiting to go to work for a specific employer and will not consider suitable work with other employers.

(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

Inasmuch as the claimant was out-of-town and not searching for work at all during the times in question, the claimant has not established the ability to work. Throughout all times in question, claimant was in Mexico and not able and available for work. Benefits are withheld until such time as the claimant is found to be able and available to work.

DECISION:

The decision of the representative dated February 25, 2016, reference 01 is affirmed. Claimant is not eligible to receive unemployment insurance benefits, effective December 19, 2015 through January 30, 2016.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/css