

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARTIN CRUZ CASTANON
Claimant

ASPLUNDH TREE EXPERT LLC
Employer

APPEAL 20A-UI-13689-ED-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/26/20
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

STATEMENT OF THE CASE:

Claimant/ Appellant filed an appeal from a decision of a representative dated October 22, 2020 that held claimant was not able to and available for work. After due notice, a hearing was scheduled for and held on December 30, 2020. Claimant participated personally. Employer participated by Scott Richard. No exhibits were admitted.

ISSUES:

The issue in this matter is whether claimant is able and available for work?
Was the claimant on an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant, Martin Cruz Castanon was employed as a full time foreman since 2011. Claimant's immediate supervisor was Mr. Nunez. On April 29, 2020 claimant's employer told claimant they would not need him to be at work for the next four weeks because there was no work available for him. Claimant was able to work during the April 29, 2020 to May 30, 2020 time period, however, his employer told him to stay home because there was no work available to him. On May 30, 2020 claimant was notified that work was available to him and he was able to return to work on a full time basis.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was able to work and available for work for the period of April 29, 2020 until May 30, 2020.

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 96.19(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.

In this case, the claimant was totally temporarily unemployed from April 29, 2020 until May 30, 2020. Employer did not have work available for him. Therefore, he is eligible for benefits during this time period. Employer will not be relieved of benefit charges as the employer did not participate in the fact finding.

Employer had work available for claimant beginning May 30, 2020. Claimant returned to work at that time.

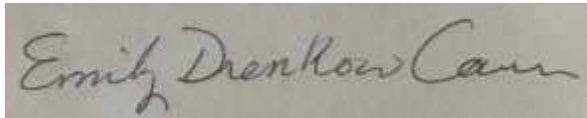
An individual claiming benefits has the burden of proof that he is able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

Claimant was told by his employer to stay home due to lack of work at the company at the time. Claimant was able and available to work during the entire period of April 29, 2020 until May 30, 2020. Accordingly, he is eligible for regular state unemployment insurance benefits for that period.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The October 22, 2020 reference 01, unemployment insurance decision is reversed. The claimant was totally and temporarily unemployed from April 29, 2020 through May 30, 2020 and is eligible for benefits during that time period. Employer will not be relieved of benefit charges as the employer did not participate in the fact finding interview.

A rectangular box containing a handwritten signature in cursive script that reads "Emily Drenkow Carr".

Emily Drenkow Carr
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

January 19, 2021
Decision Dated and Mailed

ed/scn