

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

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**JAIME MORALES**  
Claimant

**APPEAL NO. 22A-UI-12853-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CANTERA AGGREGATES LLC**  
Employer

**OC: 04/10/22  
Claimant: Appellant (4R)**

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Iowa Code Section 96.4(3) – Able & Available  
Iowa Code section 96.1A(37) – Temporarily Unemployed

**STATEMENT OF THE CASE:**

On May 23, 2022, Jaime Morales (claimant) filed a timely appeal from the May 19, 2022, (reference 01) decision that denied benefits effective April 10, 2022, based on the deputy's conclusion the claimant was still employed in an on-call job in the same capacity as in the original contract of hire and was not available for work within the meaning of the law. After due notice was issued, a hearing was held on July 11, 2022. Claimant participated. The employer did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Exhibit A, the appeal form, was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, and WAGE-A and WAGE-C.

**ISSUES:**

Whether the claimant was able to work and available for work during the six weeks between April 10, 2022 through May 21, 2022.

Whether the claimant is an on-call worker.

Whether the claimant was partially and/or temporarily unemployed during the six weeks between April 10, 2022 through May 21, 2022.

Whether the employer's account may be charged for benefits for the six weeks between April 10, 2022 through May 21, 2022.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Jaime Morales (claimant) established an original claim for benefits that was effective April 10, 2022. Iowa Workforce Development set the weekly benefit amount at \$424.00. At the time the claimant established his claim for benefits, he reported he was attached to an employer, Cantera Aggregates, L.L.C. At the time the claimant established his claim for benefits, IWD characterized the claimant as a group 3 job-attached claimant and waived the work search requirement.

Cantera Aggregates, L.L.C. is the sole base period employer. The claimant's standard base period would have been the four quarters of 2021. However the claimant did not perform work

for Cantera during the second and third quarters of 2021 and would not have met the unemployment insurance minimum earnings requirement without use of an alternate base period. The claimant's quarterly wages since the beginning of 2021 are as follows:

| EMPLOYER                | ACCT-LOC   | 2021/1 | 2021/2 | 2021/3 | 2021/4 | 2022/ |
|-------------------------|------------|--------|--------|--------|--------|-------|
| CANTERA AGGREGATES, LLC | 597481-000 | 1109   |        |        | 9332   | 2724  |

The claimant made weekly claims for the six weeks between April 10, 2022 through May 21, 2022, but has thus far received no benefits in connection with the claim. The claimant was willing, ready and able to work for the employer during those six weeks. The claimant has not made weekly claims for the period of May 22, 2022 through the benefit week that ended July 9, 2022.

The claimant has for several years worked off-and-on for Cantera Aggregates, L.L.C. as a dump truck driver hauling aggregate for use in road construction. The most recent period of employment began in October 2021. Iowa Workforce Development records reflect a brief period of unemployment in January 2022. The claimant returned to the employment after the brief break and continued to perform work for the employer until March 23, 2022. When the employer had work for the claimant, the claimant worked a full-time work schedule that included 10-hour shifts four days a week. The claimant's employment was not on-call. In March 2022, the dump truck assigned to the claimant broke down. At that point, the employer did not have additional work for the claimant. The employer told the claimant the employer would recall the claimant when the truck issue was resolved, but the employer has never contacted the claimant about returning to work.

The claimant has not looked for other employment since establishing the claim that was effective April 10, 2022. The claimant has instead continued to wait for recall to the Cantera employment.

The claimant is a person of retirement age and advises he has received a "pension" since he was 62. By pension, the claimant most likely means Social Security retirement benefits.

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.4(3) provides as follows:

96.4 Required findings. An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. a. 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 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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".

b. Notwithstanding any provision of this chapter to the contrary, the department may establish by rule a process to waive or alter the work search requirements of this subsection for a claim for benefits if an individual has a reasonable expectation that the individual will be returning to employment and is attached to a regular job or industry or a member in good standing of a union therein eligible for referral for employment. To be

considered attached to a regular job or industry, an individual must be on a short-term temporary layoff. If work is not available at the conclusion of the layoff period due to short-term circumstances beyond the employer's control, the employer may request an extension of the waiver or alteration for up to two weeks from the department. For purposes of this paragraph, "short-term temporary layoff" means a layoff period of sixteen weeks or less due to seasonal weather conditions that impact the ability to perform work related to highway construction, repair, or maintenance with a specific return-to-work date verified by the employer.

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. 871-24.22(2)(i)(1) provides:

Benefit 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.

i. On-call workers.

(1) Substitute workers (i.e., post office clerks, railroad extra board workers), who hold themselves available for one employer and who do not accept other work, are not available for work within the meaning of the law and are not eligible for benefits.

...

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code section 96.1A(37)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

Iowa Admin. Code r. 871-24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Iowa Code section 96.1A(37) 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.

If a claimant individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

The evidence in the record establishes that during the period of April 10, 2022 through May 21, 2022, the claimant was able to work, available for work, but temporarily laid off. The claimant was not and is not an on-call worker within the meaning of the law. When the claimant has performed work for the employer, the claimant has worked ongoing full-time work. The claimant is eligible for benefits for the six weeks between April 10, 2022 through May 21, 2022, provided the claimant meets all other eligibility requirements. The employer's account may be charged for benefits for that period.

Iowa Administrative Code rule 871-24.2.(1)(g) provides as follows:

(g). No continued claim for benefits shall be allowed until the individual claiming benefits has completed a continued claim or claimed benefits as otherwise directed by the department.

(1) The weekly continued claim shall be transmitted not earlier than 8 a.m . on the Sunday following the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on Friday following the weekly reporting period.

In the absence of weekly unemployment insurance claims for the period beginning May 22, 2022, there is no basis for considering the claimant for benefits for that period.

In the event the claimant reactivates the claim for benefits and commences making weekly claims for the period beginning on or after July 10, 2022, the claimant cannot be considered attached to Cantera Aggregates, L.L.C. and must commence a search for new employment. This matter will be remanded to the Benefits Bureau for entry of a change to the claimant group number from 3 to 6 prospectively. In the event the claimant reactivates the his claim for benefits and commences making weekly claims for the period beginning on or after July 10, 2022, IWD Benefits Bureau should determine whether the claimant meets the able and available requirements for that period.

This matter will also be remanded to the Benefits Bureau for a decision concerning the claimant's separation from Cantera Aggregates.

**DECISION:**

The May 19, 2022, (reference 01) decision is MODIFIED in favor of the claimant/appellant as follows. During the period of April 10, 2022 through May 21, 2022, the claimant was able to work, available for work, but temporarily laid off. The claimant was not and is not an on-call worker within the meaning of the law. The claimant is eligible for benefits for the six weeks between April 10, 2022 through May 21, 2022, provided the claimant meets all other eligibility requirements. The employer's account may be charged for benefits for that period.

**REMAND:**

This matter is REMANDED to the Benefits Bureau for a decision concerning the claimant's separation from Cantera Aggregates and for a change in group code from 3 to 6. In the event the claimant reactivates his claim for the period on or after July 10, 2022, the Benefits Bureau will need to determine the able and available issues for that period.



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James E. Timberland  
Administrative Law Judge

September 12, 2022

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Decision Dated and Mailed

jet/ac

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.