

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**JOSE N TORRES**  
Claimant

**MONSANTO PRODUCTION SUPPLY LLC**  
Employer

**APPEAL 21A-UI-25442-CS-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/06/20  
Claimant: Appellant (1)**

---

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

**STATEMENT OF THE CASE:**

On November 16, 2021, the claimant/appellant filed an appeal from the November 8, 2021, (reference 01) unemployment insurance decision that denied benefits based on claimant requesting and granted a leave of absence. Benefits were denied effective October 3, 2021. The parties were properly notified about the hearing. A telephone hearing was held on January 14, 2022. Claimant participated through CTS Language Link Spanish Interpreter, Diego (Identification #14224). Employer did not call in to participate. Claimant's daughter Indira Torres was present as a witness but was not called to testify. Administrative notice was taken of claimant's unemployment insurance benefits records.

**ISSUES:**

Is the claimant able to and available for work?  
Is 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: Claimant began working for employer in 2002. Claimant last worked as a seasonal migrant agricultural worker. Claimant lives in Texas and travels to Iowa to perform agricultural work for the employer.

Claimant last worked for employer on September 24, 2021. Claimant received notice that his daughter had an accident in Texas. Claimant informed the employer and the employer agreed claimant could return to Texas. Claimant did not return prior to the end of the agricultural season because of his daughter's accident and because he could not afford to go back to Iowa when the season was almost over.

A decision on claimant's separation from employer has not been made. Claimant will return to work for the employer on February 25, 2022.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective October 3, 2021.

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(1)a 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.

(1) *Able to work.* An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. *Illness, injury or pregnancy.* Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.22(2) 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.

(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 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.

(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or 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.

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

In this case, claimant has not met his burden of proof that he is available for work. Claimant asked the employer to leave work due to his daughter being involved in an accident. The employer agreed claimant could leave employment to return to his home in Texas to be with his daughter. Claimant did not return to work for the employer and is waiting to be recalled by the employer to continue working for employer in February 2022. Claimant is disqualified from benefits beginning October 3, 2021, because he has not proved he was available for work. Claimant requested the leave of absence, was out of town in Texas, and did not return back to work in Iowa. Additionally, claimant is disqualified from benefits because he is limiting his availability for work because he is waiting for a specific employer to start work again in February 2022. Accordingly, he is not eligible for unemployment insurance benefits.

**DECISION:**

The November 8, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective October 3, 2021. Benefits are denied.



---

Carly Smith  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau

February 7, 2022  
Decision Dated and Mailed

cs/scn

**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.