

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JOSE MARTINEZ**

Claimant

**APPEAL 22A-UI-00359-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MONSANTO PRODUCTION SUPPLY LLC**

Employer

**OC: 10/10/21**

**Claimant: Appellant (1)**

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Iowa Code section 96.1A(37) – Definitions – Total, partial unemployment  
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search  
Iowa Code § 96.7(2)A(2) – Charges – Same base period employment  
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages  
Iowa Admin. Code r. 871-24.22(2)i(3) – Benefit Eligibility - On-call Wage Credits

**STATEMENT OF THE CASE:**

On November 24, 2021, the claimant, Jose Martinez, filed an appeal from the November 17, 2021, (reference 01) unemployment insurance decision that denied unemployment insurance benefits effective October 10, 2021. The parties were properly notified about the hearing. A telephone hearing was held on January 24, 2022. Claimant participated. The employer did not participate. Official notice was taken of the agency records. Exhibit A was received into the record.

**ISSUES:**

Whether claimant is totally, partially or temporarily unemployed?  
Whether claimant is able to and available for work?  
Whether claimant is still employed at the same hours and wages?  
Whether employer's account is subject to charge?

**FINDINGS OF FACT:**

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

The claimant began employment as a seasonal laborer with the employer, Monsanto Production Supply LLC, in 2018. The claimant provided a copy of his contract which specifies he is to work on an on-call basis during the season. In 2021, the season ended on October 16, 2021. His most recent hourly wage was \$18.00 per hour.

The claimant filed for benefits on October 10, 2021. He is not looking for work with other employers because he is waiting for the next season to begin. The claimant's base period consists entirely of on-call wages received from this employer.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was not able and available effective October 10, 2021.

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. [Emphasis added]

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 96.1A, 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".

Iowa Admin. Code r. 871-24.22(2)i(3) 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....

i. On-call workers.

(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:

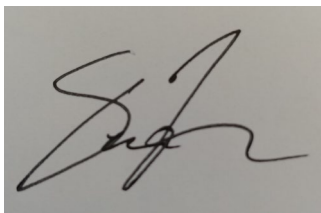
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(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.

Because claimant agreed to work "on-call" or as needed, and the wage history consists of on-call wages, he is not considered to be unemployed within the meaning of the law. When an individual is hired to work on-call, the implied agreement is that they will only work when work is available and that work will not be regularly available. Thus any diminution in hours is directly related to the on-call status when work is not available as no regular hours were guaranteed. Claimant is not eligible for regular unemployment insurance benefits during the weeks employer did not have work available.

**DECISION:**

The November 17, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant's base period consists entirely of on-call work and he is unwilling to work on a different basis. As a result, the claimant cannot be considered unemployed. He is also not able and available for work. Benefits are denied.



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Sean M. Nelson  
Administrative Law Judge  
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February 16, 2022  
Decision Dated and Mailed

sn/scn