

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CHRISTOPHER L CLARK**  
Claimant

**ADVANCE SERVICES INC**  
Employer

**APPEAL 20A-UI-05270-DB-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/12/20**  
**Claimant: Respondent (5R)**

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Iowa Code § 96.4(3) – Able to and Available for Work  
Iowa Code § 96.19(38)B – Total, Partial, and Temporary Unemployment  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment  
Iowa Code § 96.3(7) – Overpayment of Benefits  
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Part time, same hours and wages  
PL 116-136 Section 2104(B) – Federal Pandemic Unemployment Compensation

**STATEMENT OF THE CASE:**

The employer/appellant filed an appeal from the June 3, 2020 (reference 01) unemployment insurance decision that found claimant was eligible for unemployment benefits and that the employer will not be relieved of charges. The parties were properly notified of the hearing. A telephone hearing was held on June 30, 2020. The claimant, Christopher L. Clark, did not participate. The employer, Advance Services Inc., participated through witness Melissa Lewien. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

Is the claimant eligible for total, temporary or partial unemployment benefits?  
Is claimant employed for the same hours and wages?  
Is the claimant able to and available for work?  
Is the employer's account subject to charges?  
Is the claimant overpaid benefits?  
Is the claimant overpaid Federal Pandemic Unemployment Compensation?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant started working for this employer on October 16, 2017. He is still employed to date. This employer is a temporary employment firm and the claimant works as a full-time temporary employee. He was assigned to work full-time at Pella Corporation. Claimant filed his original claim for benefits effective April 12, 2020. His weekly-benefit amount is \$232.00.

Claimant's administrative records establish that he has filed weekly-continued claims for benefits from April 12, 2020 through June 20, 2020. Claimant has received regular unemployment insurance benefits in the amount of \$232.00 for the weekly-continued claim he filed for the week-ending May 2, 2020 because the employer was closed due to the COVID 19

pandemic. Claimant also received Federal Pandemic Unemployment Compensation of \$600.00 for the week-ending May 2, 2020. Following that week, the claimant's full-time hours at Pella Corporation have been available to him.

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

For the reasons that follow, the administrative law judge concludes as follows:

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 section 96.19, subsection 38, paragraph "b", subparagraph (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".

(emphasis added).

Iowa Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "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.

Iowa Code § 96.7(2)a(2)a provides:

Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the 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. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

(emphasis added).

In this case, the claimant was totally unemployed for the week-ending May 2, 2020. As such, benefits are allowed, provided he is otherwise eligible. Because the claimant is eligible for benefits, the issues of overpayment of benefits is moot.

The employer contends that the reduction in hours was due to the COVID 19 pandemic. The chargeability issue and whether the employer's account may be charged for any benefits is remanded to the Tax Bureau of Iowa Workforce Development for an initial investigation and determination.

**DECISION:**

The June 3, 2020 (reference 01) decision is modified with no change in effect. Benefits are allowed effective April 12, 2020, provided the claimant is otherwise eligible. The claimant must report all gross wages earned when filing any weekly-continued claims for benefits.

**REMAND:**

The chargeability issue delineated in the findings of fact of whether the employer's account may be charged for benefits paid due to the COVID 19 pandemic is remanded to the Tax Bureau of Iowa Workforce Development for a determination of allocation of charges.

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Dawn Boucher  
Administrative Law Judge

July 9, 2020  
Decision Dated and Mailed

db/scn