

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AVERY A IBBOTSON

Claimant

APPEAL 21A-UI-09102-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 09/13/20

Claimant: Respondent (4R)

Iowa Code § 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

STATEMENT OF THE CASE:

Employer filed an appeal from the March 23, 2021 (reference 03) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on June 16, 2021, at 1:00 p.m. Claimant did not participate. Employer participated through Melissa Lewien, Risk Manager. Employer's Exhibits 1 – 2 were admitted. Official notice was taken of the administrative 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: Claimant began his employment with Advance Services, a temporary employment firm, on April 6, 2015. On November 10, 2019, claimant began his most recent assignment as a full-time Production Worker at Cardinal Glass. Claimant worked Monday through Friday from 6:00 a.m. until 2:30 p.m.

Claimant was absent from work from September 14, 2020 through September 18, 2020. Claimant requested this time off from work to quarantine due to Covid-19. Claimant's absence was not mandated by employer. Claimant returned to work September 21, 2020. On October 1, 2020, claimant's assignment ended at Cardinal Glass's request.

An unemployment insurance decision regarding claimant's separation from employment with Advance Services has not been issued.

REASONING AND CONCLUSIONS OF LAW:

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

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.

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", unnumbered paragraph (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. R. 871-24.23(10), (26) provide:

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.

(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 96.7(2)a(2) provides:

2. 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.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

Between September 13, 2020 and September 19, 2020, claimant performed no work and received no wages. Therefore, claimant was totally unemployed. Because claimant was totally unemployed, claimant is required to be able to and available for work. Claimant has the burden of proving that he was able to and available for work. Iowa Admin. Code r. 871-24.22. Claimant requested and was granted a leave of absence; therefore, he was not able to and available for work. Accordingly, benefits are denied.

Between September 20, 2020 and September 26, 2020, claimant worked his regular hours and earned his regular wages; therefore, claimant was not totally or partially unemployed. Benefits are denied.

Between September 27, 2020 and October 3, 2020, claimant worked fewer than his regular hours and, thus, was partially unemployed. A determination on claimant's eligibility for partial

benefits for the week ending October 3, 2020 is reserved pending the outcome of the separation issue that has been remanded for an investigation and decision.

Effective October 4, 2020, claimant performed no work and received no wages. Therefore, claimant was totally unemployed. Because claimant was totally unemployed, claimant is required to be able to and available for work. Claimant has the burden of proving that he was able to and available for work. Claimant has not established that he was able to work and available for work. Accordingly, benefits are denied.

DECISION:

The March 23, 2021 (reference 03) unemployment insurance decision is modified in favor of appellant.

Between September 13, 2020 and September 19, 2020, claimant was totally unemployed and not able to and available for work; benefits are denied.

Between September 20, 2020 and September 26, 2020, claimant was not unemployed; benefits are denied.

Between September 27, 2020 and October 3, 2020, claimant was partially unemployed; claimant's eligibility for partial benefits is reserved pending the outcome of the issue on remand.

Effective October 4, 2020, claimant was totally unemployed and not able to and available for work; benefits are denied.

REMAND:

The issue of separation is remanded to the Benefits Bureau of Iowa Workforce Development for an investigation and decision.



Adrienne C. Williamson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

June 30, 2021
Decision Dated and Mailed

acw/ol