

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMIE L MILLER
Claimant

ADVANCE SERVICES INC
Employer

APPEAL 19A-UI-09228-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/27/19
Claimant: Respondent (2R)**

Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the November 22, 2019 (reference 05) unemployment insurance decision that found claimant was eligible for unemployment benefits because the offer of work with Advance Services Inc. was prior to the original claim for benefits. The parties were properly notified of the hearing. A telephone hearing was held on December 17, 2019. The claimant did not participate. The employer participated through witness Melissa Lewien. Employer's Exhibit 1 was admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUE:

Was the claimant able to work and available for work effective October 27, 2019?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed an original claim for unemployment insurance benefits effective October 27, 2019. Claimant worked for this employer from October 8, 2019 to October 14, 2019. This employer is a temporary employment firm. The claimant worked as a temporary employee. His job placements included Plastipak and then Midwest Demolition.

Claimant's administrative records establish that on November 21, 2019, a fact-finding interview was scheduled regarding claimant's separation from this employer. However, a decision regarding whether the claimant failed to accept a suitable offer of work was issued on November 22, 2019 (reference 05). The decision found that the offer occurred prior to the original claim date. During the fact-finding interview, claimant stated to Ms. Lewien that he was not looking for work and is staying home with his minor child instead.

There has been no initial investigation and determination regarding claimant's separation from this employer. The question of whether the claimant's separation from this employer is disqualifying under Iowa Code § 96.5(1)j will be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination. Further, the issue of whether the claimant has been overpaid unemployment insurance benefits due to his failure to be able to and available for work is remanded to the Benefits Bureau of Iowa Workforce Development for an initial determination.

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".

Iowa Admin. Code r. 871-24.23(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

Claimant has chosen to stay home with his minor child instead of searching for work and being available for work. Because he is unduly limiting his availability, he is not considered available for work within the meaning of the law. Benefits are denied effective October 27, 2019 due to claimant's unavailability.

DECISION:

The November 22, 2019 (reference 05) decision is reversed. Claimant is not eligible for benefits effective October 27, 2019 because he is not available for work.

REMAND:

This matter is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination whether the claimant's separation from employment with this employer was disqualifying pursuant to Iowa Code § 96.5(1)j and whether that claimant has been overpaid benefits due to his unavailability as delineated in the findings of fact.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/scn