

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

SANDRA L PEAK

Claimant

ADVANCE SERVICES INC

Employer

APPEAL NO: 13A-UI-02425-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/10/12

Claimant: Appellant (2)

Section 96.4-3 – Able and Available/Search for Work
871 IAC 24.2c(3) – Definition of Temporary Unemployment

STATEMENT OF THE CASE:

The claimant appealed a department decision dated February 21, 2013, reference 03, that held she was no longer temporarily unemployed and she is required to search for work. A telephone hearing was held on March 27, 2013. The claimant participated. Michael Payne, Loss Prevention Specialist, participated for the employer. Claimant's Exhibit A was received as evidence.

ISSUE:

Whether the claimant is required to search for work as she is no longer temporarily unemployed.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant began a work assignment for the employer (temp employment firm) at Syngenta as a seed corn technician in July 2005. She has worked continually on this assignment thru the date of this hearing though there are work slow-down periods where her normal work hours are reduced.

Most recently, the department issued decisions on December 10, 2012 and February 21, 2013 that claimant is still employed but working reduced hours that make her eligible for partial UI benefits. She filed an unemployment claim effective June 10, 2012 and a recent January 20, 2013 UI claim. She received partial benefits when she worked and reported wages less than her WBA of \$233.00.

Most recently, the employer protested her additional benefit claim filed January 20, 2013 that she could no longer be considered as temporarily unemployed with the employer. This protest was upheld by the department decision that has the effect to require claimant to search for work.

The department record shows claimant reported earned wages of \$241.00 for the week ending January 26 that meant she had excessive earnings and received no benefit. She reported

wages of \$187.00 for the week ending February 2 and received a partial benefit of \$85.00, and \$218.00 wages for the week ending February 9 and received a partial benefit of \$54.00. She reported wages of \$320.00 for the week ending February 16, received no benefit and ceased claiming for benefits thru this hearing date.

REASONING AND CONCLUSIONS OF LAW:

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".

The administrative law judge concludes that the claimant is not temporarily unemployed and she is not required to search for work while continuing employment with the employer.

Claimant filed her January 20, 2013 claim because of a reduction of her work hours not because she was laid-off for lack of work. The department considers temporary unemployment of four consecutive weeks or less due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular employer (see 871 IAC 24.2c(3)). Claimant did not claim she was the subject of a temporary lay-off.

As to claimant's search for work requirement, individuals receiving partial benefits are exempt from making personal applications for work in any week they have worked and received wages from a regular employer (see 871 IAC 24.22(3)f(4)). Claimant received partial benefits the week ending February 2 (\$85) and February 9 (\$54), and no benefits the week ending January 26 due to earning excessive wages from the (regular) employer. She ceased claiming benefits when her hours returned to a more normal full-time type of work schedule.

The employer protest is responsible for triggering the department decision in this matter that requires claimant to search for work. While the employer/temp employment firm is correct that claimant does not have the same attachment to it as a regular full-time employer, this protest does not require claimant or any other similarly situated employee to search for work while being partially unemployed. If the employer does temporarily lay-off claimant for lack of work for any four-week period or more it may protest the work search issue.

Unfortunately, the ignorance of the department fact-finding representative to understand the issue in this matter caused a needless brouhaha. The recent department decisions that claimant is eligible for benefits as still employed for her regular employer should have triggered that a work search is unnecessary for a claimant seeking partial UI benefits.

DECISION:

The department decision dated February 21, 2013, reference 03, is reversed. The claimant is not required to search for work as she is not temporarily unemployed but eligible for partial UI benefits while working a reduced work schedule for her employer.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs