

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOSE A HERNANDEZ
Claimant

ADVANCE SERVICES INC
Employer

APPEAL 20A-UI-02403-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/16/20
Claimant: Respondent (2R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The employer/appellant, Advanced Services Inc., filed an appeal from the March 17, 2020 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 22, 2020. The claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer participated through Melissa Lewien, risk management.

The administrative law judge took official notice of the administrative records. Employer Exhibit 1 was admitted into evidence. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant able to work and available for work effective March 15, 2020?
Is the claimant still employed at the same hours and wages?
Is the claimant eligible for partial unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a staffing firm. The claimant most recently worked for this employer on assignment from February 19, 2020 - March 13, 2020 when the assignment ended. The claimant established a claim for benefits with an effective date of February 16, 2020 and opened an additional claim effective March 1, 2020. The issue of the claimant’s separation after March 13, 2020 from the employer under Iowa Code 96.5(1)J has not yet been adjudicated at the claims level.

The employer has assignments available, and the claimant has not inquired about new work. The claimant has been employed since 2009 for this employer and familiar with requesting

assignment and communicating with the employer. Based upon the claimant's weekly continued claims history, he has not reported any other wages, to reflect he is working for another employer. The employer doesn't know if the claimant has other employment, or any restrictions to his employability. The claimant did not attend the hearing to present evidence or refute the employer's testimony.

Note: The issue of the claimant's February 14, 2020 separation with this employer is currently pending and scheduled for hearing. See reference 03 decision/ Appeal 20A-UI-02843-JT-T.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.19(38) 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.

For an individual to be eligible to receive benefits, he must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that she is able and available for work within the meaning of the statute. 871 IAC 24.22; *Davoren v. Iowa Employment Sec. Comm'n*, 277 N.W.2d 602, 603 (Iowa 1979). To be found able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); 871 IAC 24.22(1).

Iowa Admin. Code r. 871-24.23(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work. (23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

Iowa Admin. Code r. 871-24.23(3) provides:

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

(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code section 96.4(3).

In this case, the evidence fails to establish the claimant is able to and available for work as defined by the unemployment insurance law. The undisputed evidence is the claimant is unemployed because he has restricted his availability to perform work. The employer credibly testified that work is available to the claimant but that he has not made himself available to accept work. Accordingly, the administrative law judge concludes the claimant does not meet the eligibility requirements to draw unemployment insurance benefits. Benefits are denied effective March 15, 2020.

The issues of whether the claimant has been overpaid benefits and whether his March 13, 2020 separation from employment is disqualifying are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination. The determination of overpayment shall also include federal benefits received through Federal Pandemic Unemployment Compensation (FPUC).

DECISION:

The unemployment insurance decision dated March 17, 2020 (reference 02) is reversed. The claimant is not able to and available for work effective March 15, 2020. Benefits are denied.

REMAND: The issues of whether the claimant has been overpaid benefits and whether his March 13, 2020 separation from employment is disqualifying are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination. The determination of overpayment shall also include federal benefits received through Federal Pandemic Unemployment Compensation (FPUC).



Jennifer L. Beckman
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April 24, 2020
Decision Dated and Mailed

jlb/scn