

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DENISE DIAZ**

Claimant

**APPEAL NO. 15A-UI-09574-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE SERVICES INC**

Employer

**OC: 12/21/14**

**Claimant: Respondent (4)**

Iowa Code Section 96.4(3) – Able & Available

Iowa Code Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 21, 2015, reference 03, decision that allowed benefits to the claimant effective December 21, 2014, provided the claimant was otherwise eligible, based on an Agency conclusion that the claimant was able to work and available for work within the meaning of the law. After due notice was issued, a hearing was held on September 10, 2015. Claimant Denise Diaz participated. Michael Payne, Risk Manager, represented the employer. The administrative law judge took official notice of the Agency's administrative record of the claimant's weekly claims for benefits and the benefits disbursed to the claimant.

**ISSUES:**

Whether the claimant has been able to work and available for work within the meaning of the law during the period of December 21, 2014 through February 28, 2015.

Whether Ms. Diaz was overpaid benefits for the period of December 21, 2014 through February 28, 2015.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Advance Services, Inc. (ASI) is a temporary employment agency. Claimant Denise Diaz has performed work for ASI in multiple full-time temporary work assignments. Ms. Diaz established a claim for unemployment insurance benefits that was effective December 21, 2014. Ms. Diaz established the claim after she completed a full-time temporary work assignment at Syngenta on December 5, 2014. Ms. Diaz had made timely contact with ASI to request an additional assignment, but ASI did not have another assignment available for her at that time.

At the time Ms. Diaz established her claim for benefits, Workforce Development categorized her as a group 6 claimant, not a group 3 claimant. Had Ms. Diaz been categorized as a group 3 claimant, that would mean that she was still attached to a particular employer, temporarily laid off and not required to make employer contacts to search for new employment. The group 6

categorization meant that Ms. Diaz was not attached to a particular employer, that she was required to make an active and earnest search for work for each week she claimed unemployment insurance benefits, but that the job contacts did not have to be in-person job contacts. When Ms. Diaz made her weekly claims reports for the weeks between December 21, 2014 and February 28, 2015, she consistently reported that she had made zero job contacts.

Ms. Diaz received unemployment insurance benefits in connection with her claim. Ms. Diaz's weekly benefit amount was set at \$311.00. For each of the seven weeks between December 21, 2014 and February 7, 2015, Iowa Workforce Development disbursed \$311.00 in benefits to Ms. Diaz. For the week ending February 14, 2015, Ms. Diaz reported \$310.00 in wages and Workforce Development disbursed \$78.00 in benefits. For the week ending February 21, 2015, Ms. Diaz reported \$330.00 in wages. Because that amount exceeded the weekly benefit amount by more than \$15.00, Workforce Development did not disburse any benefits to Ms. Diaz for that week. For the week ending February 28, 2015, Ms. Diaz reported \$160.00 in benefits and Workforce Development disbursed \$228.00 in benefits. Ms. Diaz then discontinued her claim for benefits. In total, \$2,483.00 in benefits were disbursed to Ms. Diaz for the period between December 21, 2014 and February 28, 2015.

On February 9, 2015, Ms. Diaz began a full-time, temporary work assignment at Syngenta. During the two of the first few weeks of the assignment, the assignment did not consistently provide full-time hours. Ms. Diaz discontinued her claim for benefits when it was clear that the assignment would offer full-time hours. Ms. Diaz completed the Syngenta assignment on July 21, 2015.

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

Iowa Administrative Code rule 871-24.2(1)(c)(3) and (6) provides as follows:

c. All claimants on an initial claim shall state that they are registered for work and shall list their principal occupation. The claims taker will then assign a group code to the claimant to control the type of registration that is made. Code assignments will be based on all facts obtained at the time of the claim filing. The group codes are:

...

(3) Group "3" claimants are workers who are employed on a reduced workweek or temporarily unemployed for a period, verified by the department, of four consecutive weeks or less, due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular "employer." This group pertains only to those individuals who worked full-time and will again work full-time if the individual's employment, although temporarily suspended, has not been terminated. After a period of temporary unemployment, claimants in this group are reviewed for placement in group "1," "2," "5" or "6."

(6) Group "6" claimants are those individuals whose occupations are of a nature that utilize résumés or who are normally unable, due to factors such as occupation, distance, etc., to make in-person contacts for employment.

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", 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".

Iowa Admin. Code r. 871-24.23(21) provides:

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

(20) Where availability for work is unduly limited because the claimant is waiting to go to work for a specific employer and will not consider suitable work with other employers.

Iowa Admin. Code r. 871-24.23(27) provides:

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

(27) Failure to report on a claim that a claimant made any effort to find employment will make a claimant ineligible for benefits during the period. Mere registration at the workforce development center does not establish that a claimant is able and available for suitable work. It is essential that such claimant must actively and earnestly seek work.

The weight of the evidence establishes that Ms. Diaz was not available for work within the meaning of the law during the period December 21, 2014 through the benefit week that ended February 7, 2015. During that time, Ms. Diaz made no work search and merely waited to hear from ASI that ASI had an additional assignment for her. Because Ms. Diaz had separated from ASI at the time she completed the Syngenta assignment on or about December 4, 2014, she was required to make an active and earnest search for work to demonstrate her availability for work. She was also required to report her job contacts when she made her weekly claims for benefits. Ms. Diaz was not eligible for the \$2,177.00 in benefits that she received for the seven-week period of December 21, 2014 through February 7, 2015. The employer's account will be relieved of charges for benefits paid to Ms. Diaz during that seven-week period.

An individual shall be deemed *partially unemployed* in any week in which, 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. Iowa Code Section 96.19(38)(b). 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 96.19(38)(c).

Iowa Admin. Code r. 871-24.23(29) provides:

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

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

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.

Effective February 9, 2015, Ms. Diaz had started a new full-time work assignment through ASI. However, during the weeks that ended February 14, 2015 and February 28, 2015, the full-time assignment did not provide full-time hours or wages that exceeded Ms. Diaz's weekly benefit amount plus \$15.00. Ms. Diaz was available for full-time work both weeks. Ms. Diaz is eligible for benefits she received for the weeks ending February 14, 2015 and February 28, 2015, provided she meets all other eligibility requirements. The employer's account may be charged for the benefits paid to Ms. Diaz for those two weeks. During the week that ended February 21, 2015, Ms. Diaz was working full-time and had wages that exceeded her weekly benefit amount plus \$15.00. Accordingly, Ms. Diaz was not eligible for benefits that week.

Iowa Code section 96.3(7) provides that if a claimant receives benefits and is deemed ineligible for benefits, Workforce Development must recover the benefits and the claimant must repay the benefits, even if the claimant was not at fault in receiving the benefits. Because Ms. Diaz has been deemed ineligible for benefits for the period between December 21, 2014 and February 7, 2015, that \$2,177.00 in benefits that she received for that period constitutes an overpayment of benefits. Ms. Diaz must repay that amount.

#### **DECISION:**

The August 21, 2015, reference 03, decision is modified as follows. The claimant did not meet the work availability requirement during the seven-week period of December 21, 2014 through February 7, 2015 and was not eligible for benefits for that period. The claimant able and available for work, but partially unemployed, during the weeks that ended February 14 and 28, 2015. The claimant was eligible for benefits for those two weeks, provided she is otherwise

eligible. The claimant was employed full-time during the week that ended February 21, 2015, did not meet the “availability” requirement and was not eligible for benefits for that week. The claimant is overpaid \$2,177.00 in benefits for the seven weeks between December 21, 2014 and February 7, 2015. The claimant must repay that amount.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs