BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

JOLENE K STAUDT Claimant, and ADVANCE SERVICES INC Employer.	:	HEARING NUMBER: 09B-UI-04508 & UI-06552 EMPLOYMENT APPEAL BOARD DECISION NUNC PRO TUNC

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-1-c

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE DENIED

The claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED**.

The Employment Appeal Board would note that the Claimant has raised questions about why she would be denied benefits dating to the first benefit year when Advance Services did not protest the first benefit year. The fact is not all denials of benefits are tied to a protest. Indeed, Advance Services actually lost on its protest, the one for the second benefit year. The difference is that an Employer need not protest when the question is eligibility for benefits under §96.4.

The question of being "able and available" for work is a week-to-week determination. Iowa Code §96.4 (first unnumbered paragraph refers to "any week"); 871 IAC 24.22(2)(h)(availability determination made at level of partial week availability); 871 IAC 24.22(3)(d)(work search requirement is "week-to-week"). Since it is a weekly issue, *each week* when calling in a weekly claim for benefits a claimant is required to certify: "(1) That the individual continues the claim for benefits; (2) That except as otherwise

indicated, during the period covered by the claim the individual was unemployed, earned no wages and received no

benefits, was able to work and available for work; (3) That the individual indicates the number of employers contacted for work; (4) That the individual knows the law provides penalties for false statements in connection with the claim…" 871 Iowa Admin. Code 24.2(1)(b). Also the nature of eligibility is such that it varies from week to week due to factors that the former employers often have no way of knowing about. Claimants may be unavailable for a single week because they are sick, because they go on vacation, because they are out of state, because a family member is sick, or for many other reasons that no one else is in a position to know about.

As a result the Department relies on weekly certifications by a claimant that he or she remains available for work. If claimant makes an inaccurate certification usually neither the Department nor any former employers have anyway of knowing that the certification is wrong. This is why the rules of the Department allow for redetermination of and able and available determinations when information reaches it, regardless of a protest. 871 IAC 24.19(3).

An example may make this clearer. Suppose a claimant is laid off work and files for benefits. The employer would have no reason protest and so does not. The claimant subsequently stops looking for work but certifies that he is. The former employer has no way of knowing this. Even when the statement of charges arrives the former employer only sees benefits have been paid – which, if the claimant is looking for work, is just what the employer would expect to see. If information on that claimant's failure to look for work were then to reach the Department should the information be ignored because the employer isn't the source? Of course, not. The same goes for claimants who may collect benefits while having unreported wages. The former employer often does not find out about the new secret employment. The Department, of course, springs into action whenever any such practice comes to its attention, no matter how. We would expect nothing different. We emphasize that these are examples and we are not suggesting that this Claimant made intentionally false certifications. These examples are just the extremes for the general principle that eligibility determinations are not tied to protests by the former employers. As a practical and legal matter they cannot be.

Here Advances Services did not protest the first claim. Given the small amount of wage credits involved, and the fact that Advance Services was not even a base period employer for the first claim, we would not expect otherwise. Meanwhile the unfortunate illness did not manifest itself until the time the Claimant was working for Advance Services. This means that the only employer who would have known the claimant may not have been able and available would not be charged for benefits during that benefit year. And the only employers who *were* charged for benefits had no reason to know of the illness, at least as far as this record shows. There's no surprise, then, that no one complained when the Claimant collected benefits during a period when, as we have found, she was not able and available for work. It could

hardly have been any other way. Now information has surfaced that the Claimant was not able to work some weeks that she claimed for benefits. Given our finding to this effect we are obligated to affirm the overpayment assessed for those weeks.

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John A. Peno

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Elizabeth L. Seiser

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Monique F. Kuester

RRA/ss