

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SANDRA L PEAK
Claimant

APPEAL NO: 09A-UI-16054-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 05/03/09
Claimant: Appellant (2)

Section 96.4-3 – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant appealed a representative's October 15, 2009 decision (reference 01) that concluded she was not eligible to receive benefits as of September 20, 2009, because she was not working a reduced work week. A telephone hearing was held on November 16, 2009. The claimant participated in the hearing. Jacque Finkra appeared on the employer's behalf. During the hearing Claimant Exhibit A was offered and admitted as evidence.

The hearing notice listed some issues that relate to an employment separation. Since the claimant still works for the employer and there has been no employment separation, issues related to an employment separation are not addressed in this decision.

Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Does the claimant work a reduced work week at times or does she work the same hours and wages that she was hired to work?

FINDINGS OF FACT:

The claimant began working for the employer in July 2005. When the claimant began working, the employer hired her to work Monday through Friday, from 7:00 a.m. to 4:00 p.m. as a lab tech. The claimant works with three other lab techs. They work as many hours as the employer has work for them to do. At times, the claimant works 40 hours a week and at other times the employer does not have enough work for the lab techs to do and they work a reduced work week. When work is slow, the claimant and her co-workers may be on-call. If they are not called to work, they earn nothing.

During the years the claimant has worked for the employer, she has established a claim for benefits to receive partial benefits when the employer has a lack of work. When the claimant established her recent claim, the week of May 3, 2009, she was held eligible to receive partial benefits because there was a lack of work and her work week was reduced.

The claimant reopened her claim for benefits during the week of September 20, because of a lack of work. Although she worked 32 to 40 hours since late July, the employer only had 19.75 hours of work for her to do her during the week ending September 26. The following weeks the claimant worked 25.50 hours or more. (Claimant Exhibit A.)

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code section 96.4-3. Where a claimant works a part-time job at the same hours and wages as contemplated in the original contract of hire and IS NOT WORKING on a reduced workweek basis different from the contract for hire, the claimant is not considered partially unemployed and is not eligible to receive benefits. 871 IAC 24.23(26).

The representative concluded the claimant's employment met the requirements of 871 IAC 24.23(26). The representative, however, failed to recognize that the majority of the time the claimant earns excessive wages and is not eligible to receive partial benefits. The facts establish that at various times the employer experiences a slowdown in work, so the claimant and her co-workers work a reduced workweek. During the weeks the employer does not have enough work, the claimant files a claim for partial benefits. The employer did not have enough work and reduced the claimant's work week during the week ending September 26, 2009. The representative's reliance on 871 IAC 24.23(26) is misplaced. As of September 20, 2009, the claimant is eligible to receive partial benefits because she worked a reduced workweek as the result of a slowdown in the employer's work.

DECISION:

The representative's October 15, 2009 decision (reference 01) is reversed. The claimant experienced a reduced workweek the week of September 20, 2009, and is eligible to receive partial benefits for this week and any week in which she works a reduced workweek.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs