

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUDITH A MERIT
Claimant

APPEAL NO. 13A-UI-02460-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 06/03/12
Claimant: Appellant (4)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.4(3) – Still Employed Same Hours and Wages
Iowa Code Section 96.7(2) – Employer Liability

STATEMENT OF THE CASE:

Judith Merit filed a timely appeal from the February 22, 2013, reference 01, decision that denied benefits effective January 20, 2013 based on an agency conclusion that she was not partially unemployed. After due notice was issued, a hearing was held on March 27, 2013. Ms. Merit participated. Michael Payne represented the employer. Exhibits One and A were received into evidence. The administrative law judge took official notice of the agency's administrative record of wages reported by or for the claimant and benefits disbursed to the claimant.

ISSUES:

Whether the claimant has been able to work and available for work since she established the additional claim for benefits that was effective January 20, 2013.

Whether the claimant has been partially unemployed since she established the additional claim for benefits that was effective January 20, 2013.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Judith Merit established an additional claim for benefits that was effective January 20, 2013. Ms. Merit discontinued the claim after the benefit week that ended February 29, 2013. Ms. Merit's weekly benefit amount had previously been set at \$187.00. Ms. Merit established her three-week claim for unemployment insurance benefits in response to a temporary decrease in the number the work hours available to her at Syngenta. Advance Services, Inc. (ASI), is the employer. Ms. Merit has been in a long-term, work assignment, through ASI, at Syngenta since 2005. The employment is supposed to be full time, but Syngenta does not always provide full-time work.

ASI is Ms. Merit's sole base period employer. Ms. Merit's base period, for purposes of the claim year that began for Ms. Merit in June 2012, consists of the four quarters of 2011. Ms. Merit's average weekly wage from the employment during the base period was \$288.41. During the benefit week that ended January 26, 2013, the employer provided Ms. Merit with only

23.5 hours of work. Ms. Merit's gross wages for that week were \$240.88. During the benefit week that ended February 3, 2013, the employer provided Ms. Merit with only 18.5 hours of work. Ms. Merit's gross wages for that week were \$187.06. During the benefit week that ended February 9, 2013, the employer provided Ms. Merit with only 21.25 hours of work. Ms. Merit's gross wages for that week were \$217.81. Ms. Merit performed all the work the employer had available for her during the three weeks in question.

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 weight of the evidence indicates that Ms. Merit made herself available for all the work the employer had available to her during the three-week period when her claim for unemployment insurance benefits was active. The weight of the evidence supports Ms. Merit's assertion that the assignment was supposed to be full time, but that the employer did not always provide full-time employment. Because Ms. Merit was attached to full-time employment, she was not required to look for other work to demonstrate her availability for work.

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).

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

[Emphasis added.] Under Iowa Code section 96.19(38)(b), the test of whether Ms. Merit is eligible for unemployment insurance benefits under a theory of partial unemployment has two parts. The first part of the test concerns whether Ms. Merit was receiving the same hours and wages as she received during the base period. The weight of the evidence indicates that for each of the three weeks in question, the number of hours and the work the employer had available to Ms. Merit was less than the average hours and wages Ms. Merit enjoyed during her base period. Thus, for each of the three weeks in question, Ms. Merit meets the first part of the test for eligibility for benefits under a theory of partial unemployment. The second part of the test requires that the wages Ms. Merit received for the affected weeks not exceed her weekly benefit amount of \$187.00 by more than \$15.00. In other words, Ms. Merit's gross weekly cannot have exceeded \$202.00. The weight of the evidence indicates that Ms. Merit met this second part of the test only for the benefit week that ended, February 2, 2013, when her weekly wages were \$187.06. Ms. Merit is eligible for benefits under a theory of partial unemployment for the week that ended February 2, 2013, provided she is otherwise eligible. Ms. Merit is not eligible for benefits for the weeks ending January 26, 2013 or February 9, 2013 because her gross wages for those weeks exceeded her weekly benefit amount plus \$15.00. The employer's account may be charged for benefits paid to Ms. Merit for the week ending February 2, 2013.

DECISION:

The Agency representative's February 22, 2013, reference 01, is modified as follows. The claimant was able to work and available for work during the three-week period of January 20, 2013 through February 9, 2013, when her additional claim for benefits was active. The claimant was partially unemployed during that benefit week that ended February 2, 2013, and is eligible for benefits for that week, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant for the week ending February 2, 2013. The claimant was not partially unemployed during the benefit weeks that ended January 26, 2013 and February 29, 2013, because her wages exceeded her weekly benefit amount plus \$15.00. The claimant is not eligible for benefits for the weeks that ended January 26 and February 9, 2013.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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