

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MIGUEL A MENDEZ**  
Claimant

**ADVANCE SERVICES INC**  
Employer

**APPEAL 21A-UI-06494-ED-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/08/19  
Claimant: Appellant (4)**

Iowa Code § 96.4(3) – Able to and Available for Work  
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

**STATEMENT OF THE CASE:**

The claimant/appellant, Miguel Mendez, filed an appeal from the February 15, 2021 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 10, 2021. The claimant participated. The employer participated through Melissa Lewien. Language link participated to provide interpretation services.

**ISSUES:**

Is the claimant totally, partially, or temporarily unemployed?  
Is the claimant able to and available for work effective August 23, 2020?  
Is the claimant still employed at the same hours and wages?  
Is the employer’s account subject to charge?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant worked in a seasonal role as agricultural labor for the employer for a couple years. Claimant’s duties include collecting corn and counting seeds. The employer has a clear policy that requires employees to contact the employer within three days of the end of their assignment for reassignment. The policy states that failure to do so will be considered a voluntary quit. The policy also contains a very clear acknowledgement by the employee that they understand that their failure to report within three days could affect their eligibility for unemployment benefits. Claimant acknowledged the policy, and receiving a copy of the policy in writing. The claimant was given a copy of the document which was separate from the contract for hire.

For his last assignment prior to the claim in question the employer assigned claimant to the customer Syngenta Seeds beginning on March 12, 2020. Claimant was notified on December 9, 2020 by both Syngenta Seeds and the employer that his assignment was ended. Claimant failed

to contact the employer about reassignment. Had he inquired the employer had work available in Iowa. Claimant stated that he was looking for work at the time but it is hard because he lives in Texas. The employer has offices in Texas. The claimant contacted the employer on March 4, 2021 about reassignment. Effective March 15, 2021, claimant resumed seasonal employment for the employer in Iowa and is remains employed under the same hours and wages as previously agreed to with the employer.

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

**For the reasons that follow, the administrative law judge modifies the initial decision in favor of the claimant.**

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.

Iowa Code section 96.7(2)a(2)(a), (b), and (c) provides:

2. Contribution rates based on benefit experience.

a. (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.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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".

under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23 provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Iowa Code section 96.5(1)j provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

j. (1) The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.

(2) To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary employment firm, to read and sign a document that provides a clear and concise explanation of the notification requirement and the consequences of a failure to notify. The document shall be separate from any contract of employment and a copy of the signed document shall be provided to the temporary employee.

(3) For the purposes of this paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(b) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

In this case, the claimant is totally unemployed on the effective date of the claim, from December 10, 2020 through March 14, 2021. However claimant failed to contact the employer within three days from the end of his assignment in order to be reassigned. The claimant did not have good cause for failing to notify the employer on time. Claimant acknowledged that he was required to notify the employer within three days of the end of his assignment. The employer had work available for the claimant.

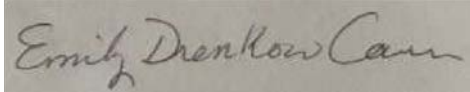
Additionally claimant stated that it was hard to find work at that time because he lives in Texas. Claimant clearly was not available to or earnestly and actively seeking work from December 10, 2020 through at least March 4, 2021 when he finally contacted the employer about reassignment.

Effective March 15, 2021, claimant is ineligible for benefits because he is working under the same hours and wages agreed upon with the employer. Benefits are denied.

**DECISION:**

The February 15, 2021 (reference 02) initial decision is modified in favor of claimant/appellant:

For the period of December 10, 2020 until March 14, 2021, Claimant is totally unemployed. However, he failed to contact the employer within three days. Effective March 15, 2021, claimant is ineligible for benefits because he is working under the same hours and wages agreed upon with employer. Benefits are denied.

A rectangular box containing a handwritten signature in dark ink. The signature appears to read "Emily Drenkow Carr".

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Emily Drenkow Carr  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

May 26, 2021  
Decision Dated and Mailed

ed/scn