

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER D WHITE
Claimant

APPEAL NO. 08A-UI-05362-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 05/18/08 R: 01
Claimant: Appellant (2-R)**

Iowa Code section 96.4(3) – Work Search Requirement

STATEMENT OF THE CASE:

Christopher D. White filed a timely appeal from the June 3, 2008, reference 03, decision that warned him he was required to make two in-person job contacts each week he claimed unemployment insurance benefits and that concluded he had failed to make an active and earnest search for work during the week that ended May 31, 2008. After due notice was issued, a hearing was held on June 23, 2008. Mr. White participated. The administrative law judge took official notice of the Agency's administrative record of the claimant's weekly report to the Agency via the automated telephonic reporting system.

ISSUE:

Whether the claimant failed to make an active and earnest search for work during the benefit week that ended May 31, 2008.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Christopher White established a claim for benefits that was effective May 18, 2008. Mr. White has a college degree and is a licensed nursing home administrator. For the benefit week that ended May 31, 2008, Mr. White submitted résumés to two prospective employers. One resume was submitted for a social worker position. Another résumé was submitted for a nursing home administrator position. Mr. White did not have in-person contact with either prospective employer during the week that ended May 31, 2008.

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".

Workforce Development rule 871 IAC 24.2(1)(c) 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:

(1) Group "1" claimants are workers who have a definite attachment to a specific employer or trade and have reasonable employment prospects in a reasonable period of time. These claimants will be registered for work.

(2) Group "2" claimants are those individuals who do not otherwise meet the qualification for group "1," "3," "4," "5," or "6" under this section. Group "2" claimants may also include the following: claimants who were employed in demand occupations; irregular employment record (in reference to occupation); delay in claim filing; moved to address remote from labor market or transportation problems; unfavorable job prospects because of recent arrival in locality; farming activities; self-employment assuming otherwise eligible; students or prospective students; pensioners; domestic care or problems; previous fraud or overpayment record; physical impairment or poor health which would limit employability; personal or other restrictions (wages, hours, travel).

(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."

(4) Group "4" claimants are those individuals who have left employment in lieu of exercising their right to bump or oust a fellow employee with less seniority or priority from the fellow employee's job. Group "4" claimants with an individual benefit year starting prior to July 1, 1984, shall be able to work, available for work and have the search for work provisions of Iowa Code section 96.4(3) waived. Group "4" claimants with an individual benefit year starting on or after July 1, 1984, shall have only the search for work provision of Iowa Code section 96.4(3) and the disqualification provision for failure to apply for or to accept suitable work of Iowa Code section 96.5(3) waived. The group "4" code shall not apply to weeks claimed under the extended benefit or federal supplemental compensation programs.

(5) Group "5" claimants are those individuals who are members of unions, trades, or professionals having their own placement facilities. Claimants assigned to this group will be registered for work. A paid-up membership is acceptable as evidence of

membership in such an organization. Loss of membership shall result in an assignment to group "2."

(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.

The greater weight of the evidence in the record indicates that Mr. White has been erroneously coded as a "group 2" claimant. The evidence indicates that Mr. White qualifies as a "group 6" claimant. Though Mr. White's job efforts during the week that ended May 31 did not meet the minimum work search requirements applicable to a "group 2" claimant, Mr. White's efforts for the week did meet the minimum work search requirements applicable to a "group 6" claimant. Mr. White shall be reclassified as a "group 6" claimant.

The evidence in the record calls into question whether Mr. White meets the work availability requirements of Iowa Code section 96.4(3). Mr. White testified that he works 54 hours per week in a self-employment restaurant venture. This matter will be remanded to the Claims Division for investigation and determination of Mr. White's availability since he established the claim for benefits that was effective May 18, 2008.

DECISION:

The Agency representative's June 3, 2008, reference 03, warning/decision is reversed. The claimant met the minimum work search requirements for a "group 6" claimant during the week that ended May 31, 2008. The claimant shall be reclassified as a "group 6" claimant.

This matter is remanded to the Claims Division for investigation and determination of Mr. White's availability since he established the claim for benefits that was effective May 18, 2008, in light of Mr. White's self-employment.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw