

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

JOHN T KUHL
Claimant

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

APPEAL 23A-UI-05609-SN-T

**AMENDED
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/05/23
Claimant: Appellant (3-R)**

Iowa Code § 96.4(3) – Able and Available/Work Search

STATEMENT OF THE CASE:

The claimant, John T. Kuhl, filed a timely appeal from the May 17, 2023, (reference 02), unemployment insurance decision that warned claimant to expand his work search but did not deny benefits for the week ending May 13, 2023. After due notice was issued, a telephone conference hearing was scheduled to be held on June 20, 2023 at 9:05 a.m. This appeal was heard jointly with 23A-UI-05608-SN-T. The claimant participated. Exhibits 1, 2, and 3 were received into the record.

ISSUE:

Did the claimant make an adequate work search for the week ending May 13, 2023, and was the warning appropriate?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant performs predominantly seasonal work for Seventh Avenue Inc doing business as Colony Brands and Affiliates. The claimant last performed work for this employer on January 17, 2023. The claimant's weekly benefit amount is \$270.00. The work he performs for this employer does not relate to road construction, maintenance, or repair. The week ending February 25, 2023 was the fifth week after the layoff.

The claimant claimed benefits for the week ending May 13, 2023. He did make work searches for that week. The claimant received a letter from Colony Brands and Affiliates offering him a return-to-work effective June 5, 2023. The claimant stated that he has already used up all of his benefits for this claim year. He also states he is getting close to retirement, so it is unlikely searching for work will reasonably lead to a job he would work in.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant was required to make a work search for the week ending May 13, 2023. He further concludes the claimant did not make any effort to search for work that week and is denied benefits for the week ending May 13, 2023.

Iowa Code section 96.4(3)a provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. a. 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". [Emphasis added]

Iowa Code section 96.1A(37) provides:

Totally unemployed", "partially unemployed", and "temporarily unemployed.

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. [Emphasis added]

Iowa Code section 96.4(3)b provides:

b. Notwithstanding any provision of this chapter to the contrary, the department may establish by rule a process to waive or alter the work search requirements of this subsection for a claim for benefits if an individual has a reasonable expectation that the individual will be returning to employment and is attached to a regular job or industry or a member in good standing of a union therein eligible for referral for employment. To be considered attached to a regular job or industry, an individual must be on a short-term temporary layoff. If work is not available at the conclusion of the layoff period due to short-term circumstances beyond the employer's control, the employer may request an extension of the waiver or alteration for up to two weeks from the department. For purposes of this paragraph, "short-term temporary layoff" means a layoff period of sixteen weeks or less due to seasonal weather conditions that impact the ability to perform work related to highway construction, repair, or maintenance with a specific return-to-work date verified by the employer.

Iowa Admin. Code r. 871-24.22(3)c provides:

c. Exceptions.

(1) Union and professional employees. Members of unions or professional organizations who normally obtain their employment through union or professional organizations are considered as earnestly and actively seeking work if they maintain active contact with the union's business agent or with the placement officer in the professional organization. A paid-up membership must be maintained if this is a requirement for placement service. The trade, profession, or union to which the individual belongs must have an active hiring hall or placement facility, and the trade, profession, or union must be the source customarily used by employers in filling their job openings. **Registering with the individual's union hiring or placement facility is sufficient**, except that whenever all benefit rights to regular benefits are exhausted and Iowa is in an extended benefit period or similar program such as the federal supplemental compensation program, individuals must also actively search for work. **Mere registration at a union or reporting to a union hiring hall or registration with a placement facility of the individual's professional organization does not satisfy the extended benefit systematic and sustained effort to find work, and additional work contacts must be made.**

(2) The requirement for seeking work is waived for the first 16 weeks after the initial claim is filed if all of the following conditions apply:

1. The individual is attached to a regular job or industry.
2. The individual is a high-skilled worker. For purposes of this numbered paragraph, "high-skilled worker" means a worker whose job or position requires licensing, credentials, or specialized training.
3. The individual is on a short-term temporary layoff. For purposes of this numbered paragraph, "short-term temporary layoff" means a layoff period of 16 weeks or less due to seasonal weather conditions that impact the ability to **perform work related to highway construction, repair, or maintenance with a specific return-to-work date verified by the employer.**
4. The individual otherwise qualifies for unemployment insurance benefits.

(3) The requirement for seeking work is waived for the first eight weeks after the initial claim is filed. A claimant shall be required to complete one work search activity each week after the first eight weeks after the initial claim is filed if all of the following conditions apply:

1. The individual is attached to a regular job or industry.
2. The individual is a worker other than a high-skilled worker as defined in

numbered paragraph 24.22(3)"c"(2)"2."

3. The individual is on a short-term temporary layoff. For purposes of this numbered paragraph, "short-term temporary layoff" means a layoff period of 16 weeks or less due to seasonal weather conditions that impact the ability to perform work related to **highway construction, repair, or maintenance with a specific return-to-work date verified by the employer.**

4. The individual otherwise qualifies for unemployment insurance benefits.

(4) If work is not available at the conclusion of the layoff period due to short-term circumstances beyond the employer's control, the employer may request a one-time extension of the waiver or alteration for up to two weeks from the department. For the purposes of this subparagraph, "short-term circumstances" means a temporary, unexpected condition that delays the anticipated start of the employer's normal work season. [Emphasis added]

The claimant was no longer temporarily unemployed because the layoff had exceeded four consecutive weeks. The claimant was also not partially unemployed during the claims period.

The claimant also did not meet the exception in Iowa Code section 96.4(3)b because he does not perform highway maintenance or construction duties. His employer does not have seasonal layoffs with a specific return to work date. The claimant also referenced he is a member of a union. Since the work search requirements apply, the analysis turns to the specific work search administrative rules for the final determination.

Iowa Admin. Code r. 871-24.22 provides, in relevant part:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

...

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

...

(3) Earnestly and actively seeking work. Mere registration at a workforce development center does not establish that the individual is earnestly and actively seeking work. It is essential that the individual personally and diligently search for work. It is difficult to establish definite criteria for defining the words earnestly and actively. Much depends on the estimate of the employment opportunities in the area. The number of employer contacts which might be appropriate in an area of limited opportunity might be totally unacceptable in other areas. When employment opportunities are high an individual may be expected to make more than the usual number of contacts. Unreasonable limitations by an individual as to salary, hours or conditions of work can indicate that the individual is not earnestly seeking work. The department expects each individual claiming benefits to conduct themselves as would any normal, prudent individual who is out of work.

a. Basic requirements. An individual shall be ineligible for benefits for any period for which the department finds that the individual has failed to make an earnest and active search for work. The circumstances in each case are considered in determining whether an earnest and active search for work has been made. Subject to the foregoing, applicable actions of the following kind are considered an earnest and active search for work if found by the department to constitute a reasonable means of securing work by the individual, under the facts and circumstances of the individual's particular situation:

(1) Making application with employers as may reasonably be expected to have openings suitable to the individual.

(2) Registering with a placement facility of a school, college, or university if one is available in the individual's occupation or profession.

(3) Making application or taking examination for openings in the civil service of a governmental entity with reasonable prospects of suitable work for the individual.

(4) Responding to appropriate "want ads" for work which appears suitable to the individual if the response is made in writing or in person or electronically.

(5) Any other action which the department finds to constitute an effective means of securing work suitable to the individual.

(6) No individual, however, is denied benefits solely on the ground that the individual has failed or refused to register with a private employment agency or at any other placement facility which charges the job-seeker a fee for its services. However, an individual may count as one of the work contacts required for the week an in-person contact with a private employment agency.

(7) An individual is considered to have failed to make an effort to secure work if the department finds that the individual has followed a course of action designed to discourage prospective employers from hiring the individual in suitable work.

Iowa Admin. Code r. 871-24.23(27) and (28) provide:

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

(27) Failure to report on a claim that a claimant made any effort to find employment will make a claimant ineligible for benefits during the period. Mere registration at the workforce development center does not establish that a claimant is able and available for suitable work. **It is essential that such claimant must actively and earnestly seek work.**

(28) A claimant will be ineligible for benefits because of failure to make an adequate work search after having been previously warned and instructed to expand the search for work effort. [Emphasis added]

The claimant made no effort to look for work for the week ending May 13, 2023. Such a finding under Iowa Admin. Code r. 871-24.23(27) “will make a claimant ineligible for benefits during the period.” It then emphasizes, “It is essential that such claimant must actively and earnestly seek work.” As observed with the analysis above, this rule is written within the greater context of exemptions displayed above. But when no exemptions apply, and no work search effort is made, then no benefits are paid. *Contrast* with Iowa Admin. Code r. 871-24.23(28) (stating “failure to make an adequate work search” will merely result in a warning instructing a claimant to expand their work search.”) Others may see Iowa Admin. Code r. 871-24.23(28) as always issuing a warning first. If this was the intent, then it would be an extremely confusing way to write the rules to reach that conclusion. Such a view stands in direct contradiction of the plain meaning of Iowa Admin. Code r. 871-24.23(27). In order for the two sections to be read to their full meaning, the words “any effort” must be distinguished from merely making an inadequate search. Iowa Admin. Code r. 871-24.23 (28) also provides the context that failure to make an adequate search may be based on an imprecise view of the sufficiency of the existing search.

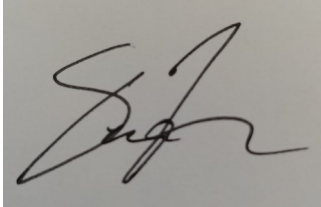
Such a rationale cannot be extended to this scenario because the claimant made no efforts to search and considered it unnecessary. Therefore, the claimant should be disqualified from benefits rather than merely getting a warning for the week ending May 13, 2023. Benefits are denied for the week ending May 13, 2023.

DECISION:

The May 17, 2023, (reference 02) unemployment insurance decision is MODIFIED IN FAVOR OF THE RESPONDENT. The claimant is ineligible for benefits for the week ending May 13, 2023 because he made no effort to search for work and no work search exemptions apply.

REMAND:

The administrative law judge is remanding to the Integrity Bureau the issue regarding whether the claimant is overpaid benefits for the week ending May 13, 2023, consistent with this decision.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is written over a light gray rectangular background.

Sean M. Nelson
Administrative Law Judge II
Iowa Department of Inspections & Appeals
Administrative Hearings Division – UI Appeals Bureau

June 30, 2023
Decision Dated and Mailed

smn/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.