

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRETT W HENDRICKS
Claimant

APPEAL NO. 24A-UI-03417-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA WORKFORCE DEVELOPMENT

**OC: 06/11/23
Claimant: Appellant (2)**

Iowa Code Section 96.4(3) – Able & Available
Iowa Admin. Code rule 87124.2(1)(e) – Failure to Report as Directed

STATEMENT OF THE CASE:

On March 29, 2024, Brett Hendricks (claimant) filed a timely appeal from the March 25, 2024 (reference 01) decision that denied benefits effective February 25, 2024, based on the deputy's conclusion that the claimant failed to provide timely proof that he was a citizen or was legally authorized to work in the United States and therefore did not meet the availability requirement effective February 25, 2024. After due notice was issued, a hearing was held on April 22, 2024. Claimant participated. IWD did not comply with the hearing notice requirements to call the designated toll-free number at the time of the hearing and did not otherwise participate in the hearing. Claimant's Exhibits 1 through 7 were received into evidence. The administrative law judge took official notice of the following IWD administrative records: KCCO and DBRO.

ISSUES:

Whether the claimant was able to work and available for work for the period beginning February 25, 2024.

Whether the claimant failed to report to Iowa Workforce Development as directed and, therefore, did not meet the availability requirement effective February 25, 2024.

FINDINGS OF FACT:

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

Brett Hendricks (claimant) established an original claim for benefits that was effective June 11, 2023 and additional claims for benefits that include an additional claim that was effective February 25, 2024. In all instances, Mr. Hendricks reported that he was a U.S. citizen. Mr. Hendricks is a native-born citizen of the United States and has resided in the U.S. from birth to the present.

On February 28, 2024, IWD erroneously mailed a letter to the claimant that directed the claimant to provide proof that he was a U.S. citizen or authorized to work in the U.S. There was no reasonable basis for the mailing. The claimant received the letter in a timely manner. The

letter directed Mr. Hendricks to submit proof that he was a citizen or legally authorized to work by March 9, 2024. Prior to the deadline set by IWD, Mr. Hendricks mailed a letter to IWD indicating that there must be a mistake, that he was a U.S. citizen, but that he would be happy to provide any additional information the claimant needed. The claimant was unable to provide an alien work authorization document due to his status as a U.S. Citizen.

On March 25, 2024, IWD mailed the reference 01 decision that denied benefits effective February 25, 2024, based on the deputy's conclusion that the claimant failed to provide timely proof that he was a citizen or was legally authorized to work in the United States and therefore did not meet the availability requirement effective February 25, 2024.

IWD has never mailed a proof of ID letter to the claimant. The claimant has provided a copy of his Iowa driver's license, his Social Security card, his birth certificate, and his U.S. passport, which documents would satisfy any proof of ID requirement.

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. ...

In order to maintain continuing eligibility for benefits during any continuous period of unemployment, an individual shall report as directed to do so by an authorized representative of the department. Iowa Administrative Code rule 87124.2(1)(e). Failure to report as directed to workforce development in response to the notice which was mailed to the claimant will result in the claimant being deemed not to meet the availability requirements. Iowa Administrative Code rule 87124.23(11).

Iowa Code section 96.5(10) provides:

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

10. Aliens—disqualified. For services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for the purpose of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who is lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the Immigration and Nationality Act. Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of the individual's alien status shall be made except upon a preponderance of the evidence.

Iowa Admin. Code r. 871-24.22(2) provides:

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.

(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.

i. Available for work. To be considered available for work, an individual must at all times be in a position to accept suitable employment during periods when the work is normally performed. As an individual's length of unemployment increases and the individual has been unable to find work in the individual's customary occupation, the individual may be required to seek work in some other occupation in which job openings exist, or if that does not seem likely to result in employment, the individual may be required to accept counseling for possible retraining or a change in occupation.

...

o. Lawfully authorized work. An individual who is not lawfully authorized to work within the United States will be considered not available for work.

There was no reasonable basis for IWD to mail to the claimant a letter directing the claimant to prove citizenship or that he was authorized to work in the U.S. The claimant took reasonable steps to respond in a timely manner to the unreasonable request. No availability disqualification shall enter in connection with the purported failed to prove citizenship or work authorization. The claimant is eligible for benefits for the period beginning February 25, 2024, provided he is otherwise eligible.

DECISION:

The March 25, 2024 (reference 01) decision is REVERSED. There was no reasonable basis for IWD to mail to the claimant a letter directing the claimant to prove citizenship or that he was authorized to work in the U.S. The claimant took reasonable steps to respond in a timely manner to the unreasonable request. No availability disqualification shall enter in connection with the purported failed to prove citizenship or work authorization. The claimant is eligible for benefits for the period beginning February 25, 2024, provided he is otherwise eligible.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light-colored background.

James E. Timberland
Administrative Law Judge

April 26, 2024
Decision Dated and Mailed

jet/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
6200 Park Ave
Des Moines, Iowa 50321
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>.

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
6200 Park Ave
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: 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 adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

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.