

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARIA A CANCHOLA
Claimant

APPEAL 17A-UI-12421-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 07/16/17
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Maria A. Canchola (claimant) filed a timely appeal from the November 28, 2017, reference 02, unemployment insurance decision that warned her to make at least two work-search contacts per week but did not deny benefits for the week ending November 18, 2017. After due notice was issued, a telephone conference hearing was scheduled to be held on December 27, 2017. The claimant's appeal letter and administrative record was sufficient to resolve the issue and no hearing was held.

ISSUE:

Did the claimant make an adequate work search for the week ending November 18, 2017, and was the warning appropriate?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant claimed benefits for the week ending November 18, 2017. She did not make two work searches for that week because she had requested and was attending Department Approved Training (DAT). On December 7, 2017, an unemployment insurance decision, reference 03, was mailed to the claimant granting her request for DAT effective October 29, 2017 through December 16, 2017. While attending DAT, the claimant does not need to be available for work or actively and earnestly seeking work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not required to make an active and earnest search for work while attending DAT; therefore, the warning is not appropriate.

Iowa Code § 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".

Iowa Admin. Code r. 871-24.23(28) provides:

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

Iowa Code § 96.4(6)a provides:

An otherwise eligible individual shall not be denied benefits for any week because the individual is in training with the approval of the director, nor shall the individual be denied benefits with respect to any week in which the individual is in training with the approval of the director by reason of the application of provision in subsection 3 of this section relating to availability for work, and an active search for work or the provision of section 96.5, subsection 3, relating to failure to apply for or a refusal to accept suitable work. However, an employer's account shall not be charged with benefits so paid.

Iowa Admin. Code r. 871-24.39 provides:

Department-Approved Training or Retraining Program.

The intent of department-approved training is to exempt the individual from the work search requirement for continued eligible for benefits so individuals may pursue training that will upgrade necessary skills in order to return to the labor forces. In order to be eligible for department-approved training programs and to maintain continuing participation therein, the individual shall meet the following requirements:

(1) Any claimant for benefits who desires to receive benefits while attending school for training or retraining purposes shall make a written application of the department setting out the following:

a. The educational establishment at which the claimant would receive training.

- b. The estimated time required for such training.
- c. The occupation which the training is allowing the claimant to maintain or pursue.

(2) A claimant may receive unemployment insurance while attending a training course approved by the department. While attending the approved training course, the claimant need not be available for work or actively seeking work except if the hours of the training are outside the regular hours worked in the base period employment. After completion of department-approved training the claimant must, in order to continue to be eligible for unemployment insurance, place no restriction on employability. The claimant must be able to work, available for work, and be actively searching for work. In addition, the claimant may be subject to disqualification for any refusal or work without good cause after the claimant has completed the training.

(3) The claimant must show satisfactory attendance and progress in the training course and must demonstrate that such claimant has the necessary finances to complete the training to substantiate the expenditure of unemployment insurance funds.

The claimant was not required to make an active and earnest search for work while attending DAT. Accordingly, the warning was not appropriate.

DECISION:

The November 28, 2017, reference 02, unemployment insurance decision is reversed. The claimant did not make an active and earnest search for work for the week ending November 18, 2017 as she was attending DAT. Therefore, the warning was not appropriate.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn