

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**TIMOTHY R BENDER**  
Claimant

**APPEAL 18A-UI-02643-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 01/28/18  
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(3) – Work Search  
Iowa Code § 96.19(38)b – Partial Unemployment

**STATEMENT OF THE CASE:**

Timothy R. Bender (claimant) filed a timely appeal from the February 13, 2018, reference 03, unemployment insurance decision that warned him to make at least two work-search contacts per week but did not deny benefits for the week ending February 10, 2018. After due notice was issued, a telephone conference hearing was held on March 22, 2018. The claimant participated. The Claimant's Exhibit A was admitted into the record.

**ISSUE:**

Did the claimant make an adequate work search for the week ending February 10, 2018, and was the warning appropriate?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed his claim for benefits effective January 28, 2018. At the time he filed for benefits, he reported that his most recent employer was the Boys and Girls Club and that his hours had been reduced. (Exhibit A) The system stated based on the information he provided that he did not need to conduct a job search because he was temporarily laid off from one of his employers.

The claimant's base period began October 1, 2016 and ended September 30, 2017. He had two employers in his base period, Boys and Girls Club and Dubuque Community School (DCS). He worked full-time for DCS until January 12, 2018, when he separated from employment and remains in his part-time job with Boys and Girls Club. Iowa Workforce Development (IWD) issued an unemployment insurance decision dated February 12, 2018, reference 01, allowing benefits as the claimant was still employed in the same hours and wages and relieving the Boys and Girls Club account of charges. IWD issued an unemployment insurance decision dated February 27, 2018, reference 02, which allowed benefits from DCS based on the determination

the claimant voluntarily quit the employment due to a change in his contract of hire. The administrative record shows that the decisions were not appealed and they have become final agency action.

At the time he filed for benefits, the claimant was also employed part-time with Hy-Vee. He began working for Hy-Vee in the fourth quarter of 2017 and took a medical leave beginning December 20, 2017. He was released to return to work effective January 10, 2018; however, his first day returned to work with Hy-Vee was on March 17, 2018.

The claimant filed a weekly continued claim for benefits for the week ending February 10, 2018. He reported that he did not make two job contacts because he did not believe it was required to remain eligible for unemployment insurance benefits. The claimant then received a warning notifying him to make two in-person job contacts each week. The claimant has reported wages earned with Boys and Girls Club each week he has filed for unemployment insurance benefits.

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

For the reasons that follow, the administrative law judge concludes that the claimant has not made an active and earnest search for work and the warning is 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 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 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.

The claimant is totally unemployed from his job at DCS and will not be returning to that full-time employment. He is currently working two part-time jobs and is eligible for benefits during any weeks in which he earns wages less than his weekly benefit amount plus fifteen dollars. However, the claimant is not currently employed in any full-time employment nor does he have an expectation of returning to full-time employment which is what he had during his base period. The claimant is required to make two job contacts each week for full-time employment in order to remain eligible for unemployment insurance benefits. The claimant did not make two job contacts the week ending February 10, 2018 and the warning was appropriate.

**DECISION:**

The February 13, 2018, reference 03, unemployment insurance decision is affirmed. The claimant did not make an active and earnest search for work for the week ending February 10, 2018. Therefore, the warning was appropriate. If it has not been done already, the claimant's work search status should be changed to include résumé work searches.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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