

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

JANE A KUHLEERS

Claimant

APPEAL NO. 23A-UI-05859-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 04/23/23

Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available, Work Search Requirement

STATEMENT OF THE CASE:

On June 6, 2023, Jane Kuhlert (claimant) filed a timely appeal from the June 1, 2023 (reference 01) decision that held the claimant must seek work, must conduct at least four reemployment activities each week, three of which must be job applications, must keep a complete record of her reemployment activities, and must provide of copy of the record up on request. While the reference 01 decision did not explicit reference a determination the claimant was not temporarily unemployed, one may reasonably infer that was the basis for the reference 01 decision. After due notice was issued, a hearing was held on June 27, 2023. Claimant participated. Exhibit A, the online appeal, was received into evidence. The administrative law judge took official notice of the following Iowa Workforce Development administrative records: DBRO, KCCO, WAGE-A and NMRO.

ISSUES:

Whether the claimant must actively and earnestly seek new employment, and satisfy the employment activities requirements, as of week that included June 1, 2023.

Whether the claimant has been partially and/or temporarily unemployed since the benefit week that included June 1, 2023.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jane Kuhlert (claimant) established an original claim for benefits that was effective April 23, 2023. The claimant has thus far made weekly claims for each of the nine weeks between April 23, 2023 and June 24, 2023.

The claimant's weekly claims, including the wages the claimant reported, appear in Iowa Workforce Development records as follows:

KCCO/xxxxxxxxxx
01

CONTINUED CLAIMS

06/29/23

PAGE

WEEK ENDING	WK ST	AB AV	RF OF	ER CT	ACT CT	WAGES	VACAT	HLDY	P	PROCESSED DATE	MODE	TIME
06/24/23	S	Y	N	3	1	241	0	0	N	06/25/23	WEEKLYCL	10.53
06/17/23	S	Y	N	3	1	195	0	0	N	06/18/23	WEEKLYCL	10.16
06/10/23	S	Y	N	0	0	202	0	0	N	06/12/23	WEEKLYCL	09.00
06/03/23	S	Y	N	0	0	346	0	0	N	06/04/23	WEEKLYCL	14.17
05/27/23	S	Y	N	0	0	335	0	0	N	05/28/23	WEEKLYCL	13.03
05/20/23	S	Y	N	0	0	194	0	0	N	05/22/23	WEEKLYCL	09.27
05/13/23	S	Y	N	0	0	406	0	0	N	05/14/23	WEEKLYCL	16.47
05/06/23	S	Y	N	0	0	114	0	0	N	05/08/23	WEEKLYCL	08.49
04/29/23	S	Y	N	0	0	91	0	0	N	04/30/23	WEEKLYCL	09.45

The claimant's base period for purposes of the April 23, 2023 original claim consists of the four quarters of 2022. The claimant's base period employers and quarterly wages were as follows:

EMPLOYER	ACCT-LOC	2022/1	2022/2	2022/3	2022/4
HRB RESOURCES LLC	xxxxxx-000	37736	22703	704	1869
CITY OF MUSCATINE	xxxxxx-000		1281	2467	746

The claimant's base period wages indicate HRB Resources was the claimant's primary base period employer and that the City of Muscatine work was part-time supplemental employment.

At the time the claimant established the April 23, 2023 original, she had most recently been employed by HRB Resources, L.L.C., d/b/a H & R Block. The claimant worked as a seasonal tax preparer. The most recent HRB employment began during the third quarter of 2022 and ended on April 18, 2023 with the end of the tax season. The HRB employment was divided into a pre-tax season and the regular tax season. During the pre-tax season that ended at year's end, the employment was part-time and paid \$13.00 an hour. During the regular tax season that began at the start of 2023, the employment became full-time and paid \$43.94 an hour. The \$1,869.00 in wages paid during the fourth quarter of 2022 corresponds to \$143.77 in average weekly wages and about 11 average weekly work hours. HRB reported paying \$42,622.00 in wages to the claimant during the first quarter of 2023. This corresponds to \$3,278.62 in average weekly wages and a 75-hour average work week during that quarter.

The claimant has had similar, consecutive seasonal employments with HRB for many years. The claimant's base period wages include HRB wages for the tax season that ended in April 2022. The wages for that period reflect similar full-time employment during the regular tax season.

The claimant must apply with HRB each year. When the most recent employment ended in April 2023 at the end of the tax year, there was no promise or guarantee the claimant would be returning at a later date for further employment. IWD records reflect the agency had deemed the claimant a group 6 claimant, rather than a group 3 claimant, meaning that IWD currently deems her to be separated from an employment.

Despite the absence of promise or guarantee, the claimant anticipates returning for a new HRB employment at the end of August or beginning of September 2023. The claimant most recently submitted an application to HRB on June 22, 2023.

The claimant is currently employed with the City of Muscatine. The claimant began this most recent period of employment with the City on April 28, 2023. The claimant works part-time at the City's municipal golf course. The part-time employment pays \$12.00 an hour. The wages the claimant has reported as part of her weekly claims consist entirely of the wages from this part-time employment. Based on the wages reported by the claimant, her weekly hours during the claim period have been as follows:

<u>Benefit Week End Date</u>	<u>Hours</u>
4/29/23	7.58
5/6/23	9.5
5/13/23	33.83
5/20/23	16.17
5/27/23	27.92
6/3/23	28.83
6/10/23	16.83
6/17/23	16.25
6/24/23	20.08

The City of Muscatine employment is seasonal and follows the golf season. The current season began in April and is expected to end in mid-November.

The claimant was employed with City of Muscatine in the same capacity during the 2022 golf season. The claimant's \$2,467.00 City of Muscatine wages paid during third quarter of 2022, when the season was in full swing, reflect \$189.77 in average wages and about 16 average weekly work hours.

The claimant has had no other employment but the part-time City of Muscatine employment since she established the April 23, 2023 original claim.

On June 1, 2023, Iowa Workforce Development sent the claimant the June 1, 2023 (reference 01) decision from which the claimant appeals in the present matter. The reference 01 decision the claimant must seek work, must conduct at least four reemployment activities each week, three of which must be job applications, must keep a complete record of her reemployment activities, and must provide of copy of the record up on request. While the reference 01 decision did not explicit reference a determination the claimant was not temporarily unemployed, one may reasonably infer that was the basis for the reference 01 decision.

By the time IWD mailed the reference 01 decision to the claimant, the claimant was in the sixth benefit week.

The claimant did not engage in a search for new employment prior to receiving the June 1, 2023 (reference 01) decision. The claimant commenced a search for new employment during the week of June 11, 2023 in response to the reference 01 decision and a June 6, 2023 (reference 03) work search warning decision.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4(3) provides as follows:

96.4 Required findings. 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".

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(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.

Iowa Code section 96.1A(37) 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.

[Emphasis added.]

This decision need only address the issues set forth above in the issue statement:

Whether the claimant must actively and earnestly seek new employment, and satisfy the employment activities requirements, as of week that included June 1, 2023.

Whether the claimant has been partially and/or temporarily unemployed since the benefit week that included June 1, 2023.

The claimant has not been temporarily unemployed since IWD issued the June 1, 2023 (reference 01) decision. At the time IWD mailed the June 1, 2023 (reference 01) decision, the claimant had been separated from her primary employment since April 18, 2023, meaning that she had been separated from the regular employment with HRB for six weeks. In addition, the claimant was in the sixth week of the unemployment insurance claim that was effective April 23, 2023. Because the period away from the employment exceeded four weeks, IWD properly concluded the claimant was not temporarily unemployed within in the meaning of the law.

The claimant has not been partially unemployed since IWD issued the June 1, 2023 (reference 01) decision. The claimant has not been in her regular job, the HRB employment, since she established the April 23, 2023 original claim. The claimant's part-time supplemental employment with City of Muscatine cannot be deemed an "odd job."

One can readily appreciate the claimant's desire to return to employment with HRB. In the meantime, effective the week that included June 1, 2023, the claimant is subject to the availability requirements, including the work search requirement, set forth at Iowa Code section 96.4(3). The claimant must seek work, must conduct at least four reemployment activities each week, three of which must be job applications, must keep a complete record of her reemployment activities, and must provide of copy of the record up on request.

DECISION:

The June 1, 2023 (reference 01) decision is AFFIRMED. The claimant has not been temporarily unemployed or partially unemployed since the week that included June 1, 2023. Effective the week that included June 1, 2023, the claimant is subject to the availability requirements, including the work search requirement, set forth at Iowa Code section 96.4(3). The claimant must seek work, must conduct at least four reemployment activities each week, three of which must be job applications, must keep a complete record of her reemployment activities, and must provide of copy of the record up on request.

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

James E. Timberland
Administrative Law Judge

June 30, 2023
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
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>.

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 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.