

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIMOTHY L BATSON
Claimant

APPEAL 18A-UI-01801-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 01/07/18
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Able and Available/Work Search
Iowa Admin. Code r. 871-24.22(3) – Able & Available – Work Search

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 6, 2018, reference 03, unemployment insurance decision that that warned claimant to make at least two work-search contacts per week but did not deny benefits for the week-ending February 3, 2018. After due notice was issued, a telephone conference hearing was set for February 27, 2018. The claimant participated.

ISSUE:

Did the claimant make an adequate work search for the week ending February 3, 2018, and was the warning appropriate?

FINDINGS OF FACT:

Having heard the testimony and having examined the evidence in the record, the administrative law judge finds: The claimant claimed benefits for the week-ending February 3, 2018 and mistakenly reported zero job contacts for that week. However, the claimant applied for five new positions for the week in question. Claimant testified he made these applications through résumés he submitted on the website indeed.com. Claimant was able to specifically identify each of the potential employers to whom he submitted his résumé.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant has made an active and earnest search for work for the week in question.

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. 871-24.22, 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.

(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 he 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...

...

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

...

(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 provides, in relevant part:

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.

The claimant has sufficiently demonstrated to the satisfaction of the administrative law judge that he conducted an active and earnest search for work for the week-ending February 3, 2018. He applied for five jobs via online résumé submission. These actions constitute an effective means of securing employment and there is no indication he discouraged an employer from hiring him. Accordingly, the warning was not appropriate.

DECISION:

The February 6, 2018, (reference 03) unemployment insurance decision is reversed. The claimant did make an active and earnest search for work for the week-ending February 3, 2018. Therefore, the warning was not appropriate. The claimant was available for work the same week and is eligible for benefits for the reasons stated above.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs