

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BOTH W LUAK
Claimant

APPEAL 21A-UI-18210-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 03/07/21
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Available for work
Iowa Admin. Code r. 871-24.22(3) – Earnest and Active Search for Work
Iowa Admin. Code r. 871-24.23(28) – Work Search Warning

STATEMENT OF THE CASE:

On August 17, 2021, claimant Both W. Luak filed an appeal from the August 9, 2021, (reference 03), unemployment insurance decision that denied benefits based on a determination that claimant failed to make an adequate work search after being warned. The parties were properly notified of the hearing. A telephone hearing was held at 9:00 a.m. on Tuesday, October 12, 2021. Appeal numbers 21A-UI-18210-LJ-T and 21A-UI-18211-LJ-T were heard together and created one record. The claimant, Both W. Luak, participated personally. RESEA Workforce Advisor and Career Planner Stephen Marotti participated on behalf of Iowa Workforce Development (“IWD”). IWD Exhibits 1 through 10 were admitted. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records.

ISSUE:

Did the claimant make an adequate work search for the week ending July 31, 2021?

FINDINGS OF FACT:

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

The claimant filed a claim for unemployment insurance benefits with an effective date of March 7, 2021. Claimant was selected to participate in a Subsequent RESEA appointment on August 5, 2021. Claimant had not previously participated in this appointment during this claim year. He had previously been selected for an initial RESEA appointment. The purpose of the Subsequent RESEA appointment is to identify any barriers to employment and any areas where IWD can offer services or assistance.

Claimant received the notice to report for the appointment. Claimant reported for the telephone appointment. However, he was then scheduled to participate in an additional virtual workshop that afternoon from 1:00 p.m. until 2:30 p.m. Claimant told Marotti he would be able to attend this workshop. However, he failed to make a record of his attendance at the workshop.

Claimant's notice to report also notified him that he was required to provide Marotti with a record of his weekly job searches prior to his August 5 Subsequent RESEA appointment. (Exhibit 4) Claimant did not comply with this instruction. When he spoke with Marotti on August 5, Marotti instructed him to submit the record of job searches to him by the end of that day. Claimant did not comply with this instruction either. Claimant explained during testimony that he tried to send his record of work searches through his phone and did not realize that it was not successful until later.

On August 13, after receiving the unemployment insurance decision dated August 9, 2021 (reference 03) finding him ineligible for benefits for one week based on inadequate record of work searches, claimant came to the Marshalltown office and delivered his work search history. Marotti described this work search history as "illegible" and "incomplete." Claimant's work search record, attached to his appeal letter, includes the names or abbreviations for employers he contacted for work. Sometimes claimant lists the specific position for which he applied; sometimes claimant lists the location of the employer; sometimes the claimant lists the contact information for the employer. Claimant wrote the date "July 24, 2021" and wrote no job contacts underneath that date. He wrote the date "July 31, 2021" down and listed three job contacts beneath it:

- Advance Services Warehouse, Grinnell IA
- Mom's Meals kitchen
- General Assembly Window and Door; job description bending, twisting, gripping; (phone number)

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 for the week ending July 31, 2021. Benefits for that one-week period are denied.

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. 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 Admin. Code r. 871-24.22(3) provides:

Benefit 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.

(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 the 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. An individual shall be ineligible for benefits for any period for which the department finds that the individual has failed to make an earnest and active search for work. The circumstances in each case are considered in determining whether an earnest and active search for work has been made. Subject to the foregoing, applicable actions of the following kind are considered an earnest and active search for work if found by the department to constitute a reasonable means of securing work by the individual, under the facts and circumstances of the individual's particular situation:

- (1) Making application with employers as may reasonably be expected to have openings suitable to the individual.
- (2) Registering with a placement facility of a school, college, or university if one is available in the individual's occupation or profession.
- (3) Making application or taking examination for openings in the civil service of a governmental entity with reasonable prospects of suitable work for the individual.
- (4) Responding to appropriate "want ads" for work which appears suitable to the individual if the response is made in writing or in person or electronically.
- (5) Any other action which the department finds to constitute an effective means of securing work suitable to the individual.
- (6) No individual, however, is denied benefits solely on the ground that the individual has failed or refused to register with a private employment agency or at

any other placement facility which charges the job-seeker a fee for its services. However, an individual may count as one of the work contacts required for the week an in-person contact with a private employment agency.

(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.

b. Number of employer contacts. It is difficult to determine criteria in which earnestly and actively may be interpreted. Much depends on the estimate of employment opportunities in the area. The number of employer contacts which might be appropriate in an area of limited opportunities might be totally unacceptable in another area of unlimited opportunities. The number of contacts that an individual must make is dependent upon the condition of the local labor market, the duration of benefit payments, a change in the individual's characteristics, job prospects in the community, and other factors as the department deems necessary.

c. Union and professional employees. Members of unions or professional organizations who normally obtain their employment through union or professional organizations are considered as earnestly and actively seeking work if they maintain active contact with the union's business agent or with the placement officer in the professional organization. A paid-up membership must be maintained if this is a requirement for placement service. The trade, profession or union to which the individual belongs must have an active hiring hall or placement facility, and the trade, profession or union must be the source customarily used by employers in filling their job openings. Registering with the individual's union hiring or placement facility is sufficient except that whenever all benefit rights to regular benefits are exhausted and Iowa is in an extended benefit period or similar program such as the federal supplemental compensation program, individuals must also actively search for work; mere registration at a union or reporting to union hiring hall or registration with a placement facility of the individual's professional organization does not satisfy the extended benefit systematic and sustained effort to find work, and additional work contacts must be made.

d. Week-to-week disqualification. Active search for work disqualifications are to be made on a week-to-week basis and are not open-end disqualifications.

e. Seniority rights. An individual who fails to exercise seniority rights to replace another employee with less seniority has the work search requirement waived during a period of regular benefits. This waiver does not apply to the individual who is receiving extended benefits or similar federal program benefits.

f. Search for work.

(1) The Iowa law specifies that an individual must earnestly and actively seek work. This is interpreted to mean that a registration for work at a workforce development center or state employment service office in itself does not meet the requirements of the law. Nor is it interpreted to mean that every individual must make a fixed number of employer contacts each week to establish eligibility. The number of contacts that an individual must make is dependent upon the condition

of the local labor market, the duration of benefit payments, a change in claimant characteristics, job prospects in the community, and such other factors as the department deems relevant.

(2) The individual is referred to suitable work, when possible, to those employers who have outstanding requests with the department of workforce development for referrals. The individual must meet the minimum lawful requirements of the employer. The individual applies to and obtains the signatures of the employer so designated on the form provided, unless the employer refuses to sign the form. The individual must return the form to the department as directed. The individual's failure to obtain the signature of designated employers, who have not refused to sign the form, disqualifies the individual from future benefits until requalified by earning ten times the weekly benefit amount.

(3) The group assignment of individuals is used, to a certain extent, in determining which ones are required to make personal applications for work. Other factors, however, such as the condition of the local labor market, the duration of benefit payments, and a change in claimant characteristics, are also taken into consideration on a weekly basis.

(4) Individuals receiving partial benefits are exempt from making personal applications for work, in any week they have worked and received wages from their regular employer. Individuals involved in hiring hall practices must keep in weekly touch with the business agent of that union in which they maintain membership. All other individuals must make contacts with such frequency as the department considers advisable, after considering job prospects in the community, the condition of the labor market and any other factors which may have a bearing on the individual's reemployment. A sincere effort must be made to find a job. A contact made merely for the sake of complying with the law is not good enough.

g. Reverse referral. A reverse referral is defined as an employer hiring only through the department of workforce development and all individuals applying for employment with the employer are referred to the department. An individual may use the department as work contacts during a week with the employer's name and the workforce development employee's name listed as the individual contacted. The workforce development center must be contacted in person by the individual to utilize each reverse referral registration job contact.

h. Job search assistance. Job search assistance classes, including reemployment services, which are sponsored by the department of workforce development and attended by the individual during a week may be counted as one of the individual's work search contacts for that week.

This rule is intended to implement Iowa Code section 96.4(3).

Claimant's record of job contacts is not sufficiently detailed to indicate whether he applied for the jobs he listed, or even what the jobs were, necessarily. Here, the evidence in the record indicates that claimant did not make an active and earnest search for work during the one-week period ending July 31, 2021. Benefits are withheld for that week.

DECISION:

The August 9, 2021, (reference 03) unemployment insurance decision is affirmed. The claimant did not make an active and earnest search for work for the week ending July 31, 2021. Benefits are withheld for that one-week period.

A handwritten signature in blue ink, appearing to read "Elizabeth Johnson", is positioned above a horizontal line.

Elizabeth A. Johnson
Administrative Law Judge

October 18, 2021
Decision Dated and Mailed

lj/ol