

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JASON X HUCK
Claimant

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

APPEAL NO. 24A-UI-03587-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/07/24
Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

On April 5, 2024, Jason Huck (claimant) filed a timely appeal from the April 1, 2024 (reference 03) decision that denied benefits effective March 24, 2024, based on the deputy's conclusion that the claimant was unduly restricting his availability for work. After due notice was issued, a hearing was held on April 25, 2024. Claimant participated. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, WAGE-B, NMRO, and the February 23, 2024 (reference 01) decision, the February 27, 2024 (reference 02) decision and Statement of Fact/Decision Worksheet and IowaWORKS.gov.

ISSUES:

Whether the claimant was able to work and available for work for the period of March 24, 2024 through April 6, 2024.

FINDINGS OF FACT:

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

Jason Huck (claimant) established an original claim for benefits that was effective January 7, 2024. Ms. Huck made weekly claims for each of the 13 weeks between January 7, 2024 and April 6, 2024. Mr. Huck established the claim in response to being temporarily laid off from his long-term, full-time employment with Xcel NDT, L.L.C. where Mr. Huck worked as an industrial radiography technician. The work involves taking scans of welds on natural gas pipes. The work slows and sometimes stops for a couple months in the winter when natural gas use peaks and there is less excavation. Mr. Huck was laid off effective January 4, 2024. Mr. Huck was recalled to the employment effective April 8, 2024.

Xcel is the sole base period employer. Mr. Hucks highest earning base period quarter was the fourth quarter of 2022, during which Mr. Huck was paid \$29,783.82. The average weekly wage during that quarter was \$2,291.00. Using a 40-hour work week, the average weekly wage translates to \$57.28 an hour. Mr. Huck's actual hourly wage with Xcel NDT is \$26.50 an hour.

On February 23, 2024, Iowa Workforce Development issued a reference 01 decision that ruled Mr. Huck was no longer deemed temporarily unemployed and was thereafter required to actively seek new employment by making at least three job applications each week and completing either a fourth application or an approved reemployment activity. At the time the decision was entered, Mr. Huck was in his seventh benefit week.

On February 27, 2024, Iowa Workforce Development issued a reference 02 work search warning decision, based on Mr. Huck's report of zero job applications for the week ending February 24, 2024. The warning stated that Mr. Huck could be disqualified for benefits for any future week in which he failed to meet the weekly reemployment requirements.

Because Mr. Huck did not appeal the reference 01 or 02 decision, each became a final and binding decision.

During a March 25, 2024 appointment with a Workforce Development representative, Ms. Huck stated:

I am not interested in looking for work with other employers. I am not actively looking for work. If I were offered a job tomorrow, I would not accept it. I already have a job. If my company recalled me tomorrow, I would go back to work with them. They told me I will go back to work sometime in mid or late April.

During the week that ended March 30, 2024, Mr. Huck applied for four jobs but did so with no intention of accepting an offer of employment if an application led to an offer. During that week, Mr. Huck also completed two additional reemployment activities. During the week that ended April 6, 2024, Mr. Huck applied for three jobs but did so with no intention of accepting an offer of employment if an application led to an offer. During that week, Mr. Huck also completed an additional reemployment activity. Because Ms. Huck planned to return to Xcel, he viewed acceptance of new employment an inconvenience to all parties involved. When Mr. Huck entered his work search information in the IowaWORKS system for the week ending March 30, 2024, he reported that he was not interested in three of the four jobs he applied for during that week. When Mr. Huck entered his work search information in the IowaWORKS system for the week ending April 6, 2024, he reported that he was not interested in one of the three jobs he applied for during that week.

Mr. Huck advises that Xcel is pursuing with IWD the possibility to have the work search requirements waived during future layoff periods.

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 Admin. Code r. 871-24.23(20) provides:

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

(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

The weight of the evidence establishes that Mr. Huck was not available for work within the meaning of the law during the two-week period of March 24, 2024 through April 6, 2024. Mr. Huck was candid with the IWD representative on March 25, 2024, when he stated he had no intention of accepting other employment because he was waiting to return to Xcel. Mr. Huck expressed a similar but more tactfully stated sentiment at the time of the appeal hearing. The evidence indicates that the claimant was merely going through the motions of applying for jobs during the weeks that ended March 30 and April 6, 2024, with no intention of accepting any offers of employment. The claimant unduly restricted his availability for work and is not eligible for benefits for the two weeks between March 24, 2024 and April 6, 2024.

DECISION:

The April 1, 2024 (reference 03) decision is affirmed. The claimant was not available for work within the meaning of the law during the two-week period of March 24, 2024 through April 6, 2024. The claimant is not eligible for benefits for the two weeks between March 24, 2024 and April 6, 2024.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in black ink on a light gray rectangular background.

James E. Timberland
Administrative Law Judge

May 3, 2024
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
6200 Park Ave
Des Moines, Iowa 50321
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
6200 Park Ave
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: 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.