

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

ANDREW D JOHNSON
Claimant

APPEAL 24A-UI-00456-SN

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 11/26/23
Claimant: Appellant (2)**

Iowa Code section 96.1A(37) – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant, Andrew D. Johnson, filed an appeal from the January 3, 2024 (reference 03) unemployment insurance decision that concluded he must perform work searches. The parties were properly notified of the hearing. An in-person hearing was held at 11:00 a.m. on February 8, 2024, at 217 West 5th in Spencer, Iowa 51301 1087. The claimant participated. Official notice was taken of the administrative records.

ISSUES:

Whether the work search requirement is waived due to being temporarily unemployed?

Whether claimant is able to and available for work?

FINDINGS OF FACT:

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

The claimant was subject to a layoff from his employer, Christensen Brothers Incorporated, on December 4, 2023. He filed an original claim for benefits on November 26, 2023. This employer builds and repairs bridges primarily. The claimant performs that work for this employer.

Iowa Workforce Development Department maintains an internal document titled, "Re-Employment Case Management." In a section regarding work search exemptions, it explains a several trades including highway maintenance, plumbers, electricians, painters, pipefitters, steamfitters, carpenters, and sheet metal workers can receive a waiver of the work search requirement "for the duration of the claim." This internal document then contains a hyperlink listing businesses who have requested exemptions.

This list gives the claimant's return to work date as April 1, 2024. It states Christensen Brothers Incorporated did not make the request until February 1, 2024. It further states there was a decision approving waiver on February 2, 2024. The claimant had no knowledge that a waiver had been requested by Christensen Brothers Incorporated.

The claimant then filed continuing claims for the next four consecutive weeks from the week ending December 2, 2023, to the week ending December 23, 2023.

He filed a fifth continuing claim with the week ending December 30, 2023.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that the claimant was exempt from performing work searches due to Iowa Workforce Development Department legally granting him a waiver under Iowa Code section 96.4(3)b and Iowa Admin. Code r. 871-24.23(3)c for the week ending December 30, 2023.

Iowa Code section 96.4(3)a provides:

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". **[Emphasis added]**

Iowa Code section 96.1A(37) provides:

Totally unemployed", "partially unemployed", and "temporarily unemployed.

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]**

As of the week ending December 30, 2023, the claimant had already exceeded four consecutive continuing weekly claims after the layoff. Accordingly, he does not fall within the exemption language of Iowa Code section 96.1A(37). This is the general rule, but the claimant's occupation potentially places him in a longer exemption established by Iowa Workforce Development by being placed on the internal document listing exempt employers.

Iowa Code section 96.4(3)b provides:

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. 871-24.23(3)c provides:

c. Exceptions.

(2) The requirement for seeking work is waived for the first 16 weeks after the initial claim is filed if all of the following conditions apply:

1. The individual is attached to a regular job or industry.
2. The individual is a high-skilled worker. For purposes of this number paragraph, "highly-skilled worker" means a worker whose job or position requires licensing, credentials or specialized training.
3. The individual is on a short-term temporary layoff. For purposes of this this number paragraph, "short-term temporary layoff" means a layoff period of 16 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.
4. The individual otherwise qualifies for unemployment insurance benefits.

(3) The requirement for seeking work is waived for the first 8 weeks after the initial claim is filed. A claimant shall be required to complete one work search activity each week after the first eight weeks after the initial claim is filed if all of the following conditions apply:

1. The individual is attached to a regular job or industry.
2. The individual is a worker other than a high-skilled worker as defined in numbers paragraph 24.22(3)c(2)2.

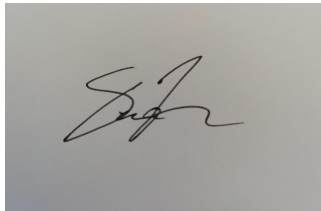
3. The individual is on a short-term temporary layoff. For purposes of this this number paragraph, “short-term temporary layoff” means a layoff period of 16 weeks or less due to seasonal weather conditions that impact the ability to perform work related to highway construction, repair, or maintenance with a specific return-to-work date verified by the employer.
4. The individual otherwise qualifies for unemployment insurance benefits.

The administrative law judge concludes the representative’s decision stating the claimant was required to perform work searches is incorrect. The claimant’s employer, Christensen Brothers Incorporated, requested and was granted a waiver. This waiver was for a seasonal layoff with a specific return to work date of April 1, 2024. The claimant also performs the work specified in Iowa Code section 96.4(3)b that its waiver does not exceed the authority given to it by the Iowa Legislature.

The administrative law judge finds the claimant was not required to perform work searches due to a lawful waiver being issued to all employees of Christensen Brothers Incorporated, including the claimant. The administrative law judge rejects the idea that the waiver is not retroactive. The claimant did not even know of the employer’s request. He cannot be faulted for the employer’s request being later than his need. Due process would be harmed if waivers are not given retroactive effect under these circumstances. The representative’s decision stating he is required to perform work searches the week ending December 30, 2023, is reversed.

DECISION:

The January 3, 2024 (reference 03) unemployment insurance decision is REVERSED. The claimant was exempt from performing work searches for the week ending December 30, 2023, due to Iowa Workforce Development Department legally granting him a waiver under Iowa Code section 96.4(3)b and Iowa Admin. Code r. 871-24.23(3)c.

A rectangular box containing a handwritten signature in black ink. The signature is stylized, appearing to be 'S. Nelson'.

Sean M. Nelson
Administrative Law Judge II

February 9, 2024
Decision Dated and Mailed

SMN/jkb

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 Avenue Suite 100
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> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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 Avenue Suite 100
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 se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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.