

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

WENDY BIRMINGHAM

Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 23A-UI-08409-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/04/22
Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

Wendy Birmingham, the claimant/appellant,¹ appealed the Iowa Workforce Development (IWD) August 25, 2023, (reference 04) unemployment insurance (UI) decision. IWD denied Ms. Birmingham REGULAR (state) UI benefits for the week of February 12-18, 2023 because IWD concluded that she did not meet the reemployment activities requirement this week after IWD had warned her of the requirement. On September 6, 2023, the Iowa Department of Inspections, Appeals, and Licensing, UI Appeals Bureau mailed a notice of hearing to Ms. Birmingham for a telephone hearing scheduled for September 19, 2023.

The undersigned did not hold a hearing because there was sufficient information in Ms. Birmingham's appeal letter, and the administrative record to resolve the appeal without testimony. The undersigned took official notice of the administrative record.

ISSUE:

Did Ms. Birmingham meet the reemployment activities requirement for the week of February 12-18, 2023?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Birmingham filed her initial UI claim effective December 4, 2022. IWD mailed Ms. Birmingham a December 13, 2022 (reference 01) UI decision that warned her about the reemployment activities requirement.

Ms. Birmingham filed a weekly UI claim for the week of February 12-18, 2023. Ms. Birmingham applied for three jobs and participated in two workshops this week. She input her job searches and workshops into the lowaworks website, but she did not certify them, so IWD did not count them.

¹ Claimant is the person who filed the UI claim with IWD. Appellant is the person or employer who filed the appeal.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Birmingham met the reemployment activities requirement for the week of February 12-18, 2023.

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. 871-24.23(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.

Ms. Birmingham applied for three jobs and participated in two workshops the week of February 12-18, 2023, but she forgot to certify them. Ms. Birmingham's mistake does not negate her job searches or workshop participation. Ms. Birmingham met the reemployment activities requirement for this week, and she should not be denied UI benefits on this basis.

DECISION:

The August 25, 2023 (reference 04) UI decision is REVERSED. Ms. Birmingham met the reemployment activities requirement for the week of February 12-18, 2023. Ms. Birmingham is eligible for UI benefits for this week, as long as no other decision denies her UI benefits.



Daniel Zeno
Administrative Law Judge

September 20, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with this 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> 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
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 adquiera 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.