

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CHRIS L CONLAN**  
Claimant

**APPEAL 17A-UI-02872-JP-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 11/20/16  
Claimant: Appellant (2)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(27) – Active and Earnest Search for Work  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the February 17, 2017, (reference 05) unemployment insurance decision that denied benefits from January 8, 2017 through January 14, 2017 based upon a failure to make an adequate work search. After due notice was issued, a hearing was held by telephone conference call on April 6, 2017. Claimant participated. Claimant exhibit A was admitted into evidence with no objection. Official notice was taken of the administrative record of claimant's continued claims history and benefit payment history, with no objection.

**ISSUE:**

Is the appeal timely?

Did the claimant make an adequate search for work the week-ending January 14, 2017?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The unemployment insurance decision was mailed to the appellant's address of record on February 17, 2017. The appellant did not receive the decision until March 3, 2017. The first notice of disqualification was when claimant contacted Iowa Workforce Development (IWD) in Des Moines, Iowa on February 27, 2017. The IWD employee informed claimant about the decision and then re-mailed the decision to claimant. Claimant received the decision on March 3, 2017 and the appeal was sent within ten days after receipt of that decision.

Claimant claimed benefits for the week-ending January 14, 2017. Claimant did make one work search for that week. Claimant testified for the week-ending January 14, 2017, there was only one job opening related to his field in his area for the week-ending January 14, 2017.

When claimant had opened his claim for benefits, he told an employee at the Dubuque local office that his field was more of a specialty position (IT Systems Engineer) and he asked what jobs he should be applying for if there is not anything available in his field. The employee at the

Dubuque local office told him to just apply for jobs in his field of work. Claimant understood this to mean that if there were not two job openings in his field, he did not have to make two job contacts every week.

On January 25, 2017, claimant received an Unemployment Insurance Letter of Inquiry, dated January 23, 2017. Claimant Exhibit A. Claimant was instructed to respond by February 1, 2017. After claimant received the letter, he contacted Iowa Workforce Development (IWD) in Des Moines, Iowa on February 6, 2017. Claimant Exhibit A. Claimant testified he delayed contacting IWD because he forgot about the letter. During the phone call with IWD on February 6, 2017, he was told he had received some misinformation from the IWD local office in Dubuque, Iowa when he opened his claim for benefits. Claimant Exhibit A. On February 6, 2017, the IWD employee in Des Moines told claimant that this advice was inaccurate and that he had to apply for anything that was within 75% of what he was making before.

### **REASONING AND CONCLUSIONS OF LAW:**

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is.

Iowa Code § 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The appellant did not have an opportunity to appeal the fact-finder's decision because the decision was not received until March 3, 2017, which was after the appeal deadline. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). Claimant filed an appeal within a

reasonable period of time after discovering the disqualification. Therefore, the appeal shall be accepted as timely.

The next issue is whether claimant made an adequate search for work the week-ending January 14, 2017. 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(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(27) provides:

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.

Claimant clearly only made only one job contact instead of the minimum two for the week ending January 14, 2017 because there was only one opening in his field. However, claimant had received incorrect advice from an IWD employee at the Dubuque local office when he opened his claim that he did not have to make a minimum of two job contacts per week if they were not two in his field. Claimant did not become aware that this advice was incorrect until February 6, 2017 when he contacted IWD in Des Moines, Iowa. Because claimant received incorrect advice from IWD regarding his work searches when he opened his claim for benefits, his work search for the week ending January 14, 2017 is considered adequate to establish eligibility for benefits. Accordingly, benefits are allowed for the week ending January 14, 2017.

**DECISION:**

The February 17, 2017, (reference 05) unemployment insurance decision is reversed. Claimant's appeal is considered timely. Claimant did make an active and earnest search for work for the week-ending January 14, 2017. Benefits are allowed for the week-ending January 14, 2017, provided the claimant is otherwise eligible.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

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