

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HETAL PATEL

Claimant

KNOXVILLE HOSPITALITY LLC

Employer

OHM SHIV HOTELS INC

Employer

APPEAL 18R-UI-00168-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/09/17

Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work

Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

Iowa Admin. Code r. 871-24.23(27) – Active and Earnest Search for Work

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 1, 2017, (reference 03) unemployment insurance decision that denied benefits based upon not being able to or available for work. The parties were properly notified about the hearing. A telephone hearing was held on January 26, 2018. Claimant participated. Neither employer responded to the hearing notice instruction by registering for the hearing and did not participate.

ISSUES:

Is the claimant able to work and available for work effective April 9, 2017?

Did the claimant make adequate work searches during the claim?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has been employed working on-call to fill in for sick employees at Shree Om Hospitality, which her spouse owns, since the second quarter of 2017, after he sold the Knoxville Hospitality Super 8 Motel, where she had worked full-time, to Ohm Shiv Hotels, Inc. on March 23, 2017. Claimant was uncertain when she began working full-time for Shree Om Hospitality, but believes it was in December 2017, or January 2018. She exhausted unemployment insurance benefits the week-ending October 7, 2017, except for a remaining balance of \$12.00. From the sixth weekly continued claim forward, claimant reported \$85.00 in wages each week beginning the week-ending May 20, 2017. She earns \$8.00 per hour, which indicates she worked 10.625 hours each of those weeks. Those wages did not impact her weekly benefit amount (WBA) of \$447.00. The employer reported earnings of \$480.00 during the second quarter of 2017, compared to her reported \$510.00. For the third quarter of 2017, the employer reported

\$960.00 of wages to her reported \$1,190.00. She also reported having made exactly two work searches per week, but did not keep a record of her work searches and could not recall where she sought work other than she had looked for banking and dental work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant has not established that she made an active and earnest search for work during the claim.

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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.

Iowa Admin. Code r. 871-24.22(3) provides, in relevant part:

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.

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.

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.

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

The October 2016, version of the *Unemployment Insurance Benefits Handbook*, provides, in pertinent part, at page 13:

Eligibility Requirements

To meet the preliminary eligibility requirements, an individual must:

- Be totally or partially unemployed
- Have worked and earned a certain amount of wages in work covered by UI in the last 15 to 18 months
- Have lost their job through no fault of their own

- *Be able to work and available for work*

To remain eligible for UI benefits, an individual must:

- *Be actively seeking work* (work search may be waived if certain criteria are met)
- Be registered for work with IWD (unless waived) at the nearest IowaWORKS center or online at www.iowaworkforcedevelopment.gov
- *Keep a record of all work search contacts and be ready to provide a copy if requested*

(Emphasis added.)

The claimant has not sufficiently demonstrated to the satisfaction of the administrative law judge, as is her burden, an active and earnest search for work since the beginning of the claim year. Curiously she did not begin full-time work for her spouse's business until after her unemployment insurance benefits were effectively exhausted, which leads the ALJ to believe she held herself out for that work. Additionally, for having claimed to have worked on-call for sick employees, her reported wages were identical from week to week. This uniformity is suspect. Her credibility is also questionable because of the uncertainty of when she began working full-time, and specifically where she sought work. Finally, she did not keep a record of work searches as is required by the Unemployment Insurance Benefits Handbook in effect at the time she initiated her claim. Accordingly, benefits are denied.

DECISION:

The November 1, 2017, (reference 03) unemployment insurance decision is affirmed. The claimant did not make an active and earnest search for work during the claim year effective April 9, 2017. Benefits are denied for each week claimed.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

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