

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

LOU D HORTON
Claimant

APPEAL NO. 08A-UI-01038-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 01/06/08 R: 04
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Able and Available/Work Search

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 29, 2008, reference 02, decision that warned claimant to make at least two in-person work search contacts per week but did not deny benefits for the week ending January 26, 2008. After due notice was issued, a telephone conference hearing was scheduled to be held on February 13, 2008. Claimant participated.

ISSUE:

The issue is whether claimant made an adequate work search for the week ending January 26, 2008 and if the warning was appropriate.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision finding claimant no longer temporarily unemployed (reversed by 08A-UI-01037-LT) was mailed on January 24, 2007 and received by claimant on Saturday, January 26, 2008. The claimant claimed benefits for the week ending January 26, 2008 but had not made work searches since she had not yet received notice she must do so.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not yet notified of the requirement to search for work during the week ending January 26, 2008.

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".

871 IAC 24.23(28) provides:

(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.

Even were the claimant considered permanently unemployed, the warning was prematurely issued since she did not receive the notice to search for work until the end of the week when the work searches were to begin. The agency cannot reasonably expect a claimant to act retroactively to January 20 when the notice was not even mailed until Thursday, January 24, 2008. In any event, claimant is considered partially unemployed based upon the above-referenced decision and no work searches are required. Accordingly, the warning was inappropriate.

DECISION:

The January 29, 2008, reference 02, decision is reversed. The claimant was not given sufficient notice to make an active and earnest search for work for the week ending January 26, 2008. Therefore, the warning was inappropriate.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw