

IOWA DEPARTMENT OF INSPECTIONS & APPEALS
Division of Administrative Hearings
Lucas State Office Building
Des Moines, Iowa 50319

DECISION OF THE ADMINISTRATIVE LAW JUDGE

MARCIA S HARRIGAN
206 N 15TH AVENUE
MARSHALLTOWN IA 50158

BETHANY J. CURRIE
ATTORNEY AT LAW
PO BOX 1180
MARSHALLTOWN IA 50158-1180

INVESTIGATION AND RECOVERY
IOWA WORKFORCE DEVELOPMENT
1000 EAST GRAND AVENUE
DES MOINES IA 50319-0209

DAN ANDERSON, IWD

Appeal Number: 06-IWDUI-171
OC: 01/08/06
Claimant: Appellant (6-R)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor Lucas Building, Des Moines, Iowa 50319.**

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to the department. 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

August 18, 2006

(Decision Dated & Mailed)

Section 96.4-3 - Able and Available
871 IAC 24.23(28) – Warning/ Work Search

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development Department decision dated July 11, 2006, reference 03, which held the claimant ineligible for benefits from January 22, 2006, to July 8, 2006, because she did not make an adequate search for work after receiving a warning.

The hearing was held pursuant to due notice on August 14, 2006, by telephone conference call. The claimant, and her Attorney, Bethany Currie, participated. Sally Oordt, Investigator, participated on behalf of Iowa Workforce Development, Investigation and Recovery. Claimant Exhibits One and Two were received as evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having considered all of the evidence in the record, finds that: The claimant filed a claim for unemployment insurance benefits effective January 8, 2006. The department received an anonymous report on May 31, 2006 that the claimant was not looking for work, and it assigned Investigator Oordt to review the issue.

The department issued a decision dated January 17, 2006 that warned the claimant she needed to make at least two job contacts each week, as she had recorded no contacts for the week ending January 14 while claiming for benefits.

Investigator Oordt mailed a notice to the claimant to an address on 15th Street dated June 30, 2006 that requested her work-search record of job contacts. The claimant was warned a failure to submit the record could result in a disqualification of benefits. Although the US Postal Service did not return the envelope to the department that contained the notice, the claimant did not receive it. Since the claimant failed to reply to the department, it issued the decision that disqualified her from receiving benefits.

The claimant learned about the disqualifying decision on July 11, 2006, and she went to the Marshalltown Workforce Center to learn what happened. The claimant filed an appeal on July 12, and the Workforce Center faxed to Unemployment Appeals the claimant's work-search record from January 10 to July 10, 2006.

The claimant's exhibits show a continuation of her work search effort through the date of this hearing with her resume.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is able and available for work.

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 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 24.22(96) 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.

871 IAC 24.23(96) Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

24.23(28) A claimant will be ineligible for benefits because of a failure to make an adequate search for work after having been previously warned and instructed to expand the search for work effort.

The administrative law judge concludes that the claimant did not receive a department request to provide her work-search record that she later provided with her appeal, such that the disqualifying decision is SET ASIDE, and the work search issue is REMANDED to Investigation and Recovery for further review pursuant to the law sections cited above.

The department's June 30 request was not mailed to the claimant's address of record, and she offered credible testimony that she did not receive it. It is apparent that the claimant has a work-search record, and that Investigation and Recovery should review it to determine whether it complies with the work-search requirement.

If Investigation and Recovery concludes that the work-search record is satisfactory, then no further action is required; otherwise, the department may provide the claimant and her attorney with notice, if any further record or interview is required. If Investigation and Recovery concludes that the claimant should be disqualified for any period due to an inadequate work-search, then it may issue a new decision with the right of appeal.

DECISION:

The decision of the representative dated July 11, 2006, reference 03, is SET ASIDE and DISMISSED. The work-search issue is REMANDED to Investigation and Recovery for further review.

rls