

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WILLIE C JOHNSON
Claimant

APPEAL 18A-UI-02083-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 10/22/17
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Able and Available/Work Search
Iowa Admin. Code r. 871-24.22(3) – Earnest and Active Search for Work

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 5, 2018, (reference 04), unemployment insurance decision that denied benefits from January 7, 2018 through January 13, 2018. After due notice was issued, a telephone conference hearing was scheduled to be held on March 26, 2018. Claimant participated. Claimant Exhibit A was admitted into evidence with no objection. Official notice was taken of the administrative record with no objection.

ISSUES:

Was the claimant able to work and available for work from January 7, 2018 through January 13, 2018?

Did the claimant make an adequate search for work the week-ending January 13, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Around December 26, 2017, claimant accepted an offer of full-time employment with Wells Fargo, but his start date was not until January 24, 2018. See Claimant Exhibit A.

Claimant claimed benefits for the week-ending January 13, 2018. For the week-ending January 13, 2018, claimant was able to and available for work and also reported wages in the gross amount of \$90.00. The administrative record reflects that for the week-ending January 13, 2018, claimant reported he only made one employer contact.

On January 8, 2018, MJ Dahms, the owner of an in-home day care, contacted claimant regarding claimant's interest from December 2017 in a position at the in-home day care. Claimant Exhibit A. The owner wanted to set up an interview with claimant, but claimant declined to interview with the owner because he had already accepted an offer with Wells Fargo "and as no longer looking for employment." Claimant Exhibit A.

On January 9, 2018, Wells Fargo recruiter Judy Waldrep e-mailed claimant regarding his upcoming employment with Wells Fargo. Claimant Exhibit A. Ms. Waldrep "wanted to touch base with [claimant] to let [him] know that all [his] pre-employment has cleared and we look forward to [claimant] starting [his] Home Preservation Specialist 1 position on January 24, 2018." Claimant Exhibit A.

On January 16, 2018, claimant received another e-mail from Ms. Waldrep regarding his upcoming employment with Wells Fargo. Claimant Exhibit A. Claimant was aware that he was required to keep track of his employer contacts when he filed a weekly continued claim.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that claimant has not made an active and earnest search for work for the week in question. Benefits are denied from January 7, 2018 through January 13, 2018.

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".

Iowa Admin. Code r. 871-24.22(2) provides:

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.

(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)(a) provides:

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.

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.

c. *Union and professional employees.* Members of unions or professional organizations who normally obtain their employment through union or professional organizations are considered as earnestly and actively seeking work if they maintain active contact with the union's business agent or with the placement officer in the professional organization. A paid-up membership must be maintained if this is a requirement for placement service. The trade, profession or union to which the individual belongs must have an active hiring hall or placement facility, and the trade, profession or union must be the source customarily used by employers in filling their job openings. Registering with the individual's union hiring or placement facility is sufficient except that whenever all benefit rights to regular benefits are exhausted and Iowa is in an extended benefit period or similar program such as the federal supplemental compensation program, individuals must also actively search for work; mere registration at a union or reporting to union hiring hall or registration with a placement facility of the individual's professional organization does not satisfy the extended benefit systematic and sustained effort to find work, and additional work contacts must be made.

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.

e. *Seniority rights.* An individual who fails to exercise seniority rights to replace another employee with less seniority has the work search requirement waived during a period of regular benefits. This waiver does not apply to the individual who is receiving extended benefits or similar federal program benefits.

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.

g. *Reverse referral.* A reverse referral is defined as an employer hiring only through the department of workforce development and all individuals applying for employment with the employer are referred to the department. An individual may use the department as work contacts during a week with the employer's name and the workforce development employee's name listed as the individual contacted. The workforce development center must be contacted in person by the individual to utilize each reverse referral registration job contact.

h. *Job search assistance.* Job search assistance classes, including reemployment services, which are sponsored by the department of workforce development and attended by the individual during a week may be counted as one of the individual's work search contacts for that week.

Claimant has failed to sufficiently demonstrate to the satisfaction of the administrative law judge an active and earnest search for work for the week-ending January 13, 2018. Although MJ Dahms contacted claimant on January 8, 2018, which was during the week-ending January 13, 2018, about a position that claimant had inquired about in December 2017, claimant informed MJ Dahms that he was no longer interested in the position and refused to interview for the position because he had already accepted a position with Wells Fargo. Claimant Exhibit A. Even though claimant had an offer of work with Wells Fargo that started January 24, 2018, he could have possibly found better or interim work in case the offer fell through or the start date was delayed.

Furthermore, claimant's contact with Wells Fargo on January 9, 2018 regarding the position he had already accepted cannot be considered an adequate work search. Claimant's contact with Wells Fargo on January 9, 2018, was not about a potential job, it was only about a position he had already accepted. This contact did not have the possibility of claimant finding better or interim work in case his offer fell through or the start date was delayed.

Claimant was unable to sufficiently demonstrate to the satisfaction of the administrative law judge an active and earnest search for work for the week-ending January 13, 2018. Accordingly, benefits are denied from January 7, 2018 through January 13, 2018 due to claimant's failure to make an active work search.

DECISION:

The February 5, 2018, (reference 04) unemployment insurance decision is affirmed. Claimant did not make an active and earnest search for work for the week-ending January 13, 2018. Benefits are denied from January 7, 2018 through January 13, 2018.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs