

IOWA DEPARTMENT OF INSPECTIONS & APPEALS  
Division of Administrative Hearings  
Wallace State Office Building – Third Floor  
Des Moines, Iowa 50319-8082

**Appeal Number: 16IWDUI152  
16IWDUI153**

**OC: 10/11/15**

**Claimant: Appellant (04, 05)**

**DECISION OF THE ADMINISTRATIVE LAW JUDGE**

**JAMES BYARS  
% JACKSONVILLE CORR CTR #K68956  
2268 EAST MORTON AVENUE  
JACKSONVILLE, IL 62650**

KAREN VON BEHREN, IWD INVESTIGATOR  
JONI BENSON, IWD  
JODI DOUGLAS, IWD  
NICHOLAS OLIVENCIA, IWD  
SHELLY EVANS, IWD  
EMILY CHAFA, UI APPEALS MANAGER

**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.

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Charles B. Tarvin, Administrative Law Judge

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March 29, 2017

(Dated and Mailed)

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Iowa Code section 96.3(7) – Overpayment of Benefits  
Iowa Code section 96.4(3) – Failure to Meet Able/Available Work Requirement  
871 Iowa Administrative Code (IAC) section 24.22 – Able to Work and Available for Work  
871 IAC section 25.8 – Recovery of Benefit Overpayments

**STATEMENT OF THE CASE**

On March 23, 2016, Iowa Workforce Development (IWD) issued a decision (reference 04) stating that from October 11, 2015 to December 26, 2015, James Byars was not eligible to receive unemployment benefits (UIB) because Byars was in an AWOL/absconded status and therefore did not meet the availability requirements of the law.

On March 25, 2016, IWD issued a decision (reference 05) stating that Byars received an

overpayment (\$2,507.25) of UIB from October 11, 2015 to December 26, 2015 because Byars was disqualified.

Byars prepared an appeal letter (dated March 29, 2016) and inserted it into a marked envelope (return address: PO Box -2, J-, Illinois) to be mailed to IWD. On April 21, 2016, the United States Postal Service (USPS) postmarked (ZIP 60403) the item of mail. On April 28, 2016, IWD received the item of mail containing Byars' appeal letter.

On May 13, 2016, IWD transmitted the cases to the Iowa Department of Inspections and Appeals (DIA) to schedule a contested case hearing. When IWD transmitted the cases, it mailed a copy of the administrative file to Byars.

On October 4, 2016 and on November 29, 2016, Administrative Law Judge Charles B. Tarvin convened the rescheduled hearing by teleconference call. Byars participated in the hearing. Karen von Behren participated in the hearing.

The judge admitted the two IWD decisions, appeal letter and postmarked envelope, IWD timeliness exhibits A-I, IWD able/available exhibits A-N, Byars' exhibits F-2-A – F-2-C, Iowa Department of Human Services (DHS) on-line food assistance application (official notice), and digital recordings into the record,

On December 23, 2016, the judge issued *Proposed Decision 16IWDUI152/16IWDUI153* in which he dismissed the appeals as not being timely filed. Byars appealed the *Proposed Decision* to the Employment Appeal Board (EAB). On February 6, 2017, EAB concluded that Byars filed the appeal(s) timely, reversed *Proposed Decision 16IWDUI152/16IWDUI153*, and remanded the case(s) to the judge to issue a decision on the merits of the case(s).

The judge did not deem it necessary to conduct an additional hearing because all issues adequately were addressed in the first hearing.

### **ISSUES**

1. Whether the claimant timely appealed the establishment and request for repayment of an overpayment of UIB.
2. Whether IWD correctly disqualified the claimant from receipt of UIB because of not meeting the availability requirement.
3. Whether IWD correctly established and requested repayment of an overpayment of UIB.

### **FINDINGS OF FACT**

On September 21, 2014, Byars was incarcerated in an Illinois county jail. Byars was placed on electronic monitoring status.

From October 4, 2014 to January 8, 2016, Byars' status was away without leave (AWOL) from electronic monitoring in the State of Illinois. (exhibit D)

On October 11, 2015, Byars, by intranet, filed a claim for UIB with IWD. Byars, upon filing the claim, certified that he will read the Facts About Unemployment Insurance guide. The guide would help Byars avoid problems, delays, or improper payments. The guide

contained general information only and did not have the force and effect of law, rule or regulation. (exhibits A, B)

The Unemployment Insurance Benefits Handbook [70-6200 (06/15)] included the following information:

o UI provides temporary benefits for unemployed people who are able to work and available for work. (p. 4)

o TO MEET THE PRELIMINARY ELIGIBILITY REQUIREMENTS, AN INDIVIDUAL MUST: be able to work and available for work. (p. 5)

o Individuals must be able and available for work while claiming benefits. It is important to notify IWD of any condition or situation which would prevent an individual from working, accepting work, or looking for work. These situations include, but are not limited to . . . being in jail . . . (p. 10)

o Individuals are responsible for repaying any benefits they were not entitled to receive. (p. 12)

(exhibit C)

From October 11, 2015 to December 26, 2015, Byars certified weekly to IWD that he was able to work and available for work. (exhibit L)

On or about November 15, 2015, Byars reportedly moved to 1- V-, C-, IL and reported the address change to IWD. (exhibit O)

IWD approved payment on Byars' claim and issued UIB for weeks ending as follows:

Oct 17, 15	\$ 181.00
Oct 24, 15	\$ 249.00
Oct 31, 15	\$ 249.00
Nov 07, 15	\$ 249.00
Nov 14, 15	\$ 249.00
Nov 21, 15	\$ 249.00
Nov 28, 15	\$ 249.00
Dec 05, 15	\$ 249.00
Dec 12, 15	\$ 249.00
Dec 19, 15	\$ 249.00
Dec 26, 15	\$ <u>85.25</u>
	\$2,507.25

(exhibit L)

From January 8, 2016 to March 17, 2016, Byars was incarcerated in the Illinois county jail. (exhibit D)

On March 4, 2016, von Behren, an IWD investigator, issued a letter to Byars stating that she was conducting an audit of Byars' UI claim because while Byars was on electronic

monitoring AWOL status, Byars may not have been able to and available for work for the weeks ending October 17, 2015 to December 26, 2015. IWD requested that Byars respond to the letter on or before March 18, 2016. It mailed the letter to Byars at the Illionis county jail. (exhibits F, G)

On March 17, 2016, Byars timely filed a written response to Behren's letter. He challenged IWD's suggestion that for the weeks ending October 17, 2015 to December 26, 2015, he was not able to and available for work. (exhibit H)

From March 17, 2016 to April 3, 2016, Byars was incarcerated at a correctional facility at PO Box -2, J-, Illinois, serving a three-year term for driving on a revoked license (class 4 felony) and escape, violation of home monitoring. (exhibit D, Byars' September 2016 request for continuance)

On March 23, 2016, IWD issued a decision (reference 04) stating that from October 11, 2015 to December 26, 2015, James Byars was not eligible to receive UIB because Byars was in an AWOL/absconded status and therefore did not meet the availability requirements of the law. IWD mailed a copy of its decision to Byars both at Byars' address (1- V-, C-, IL) of record and to Byars' then-current address (PO Box -2, J-, IL) with the Illinois Department of Corrections. (exhibits I-K)

The United States Postal Service (USPS) timely delivered the decision letter to Byars. (testimony of Byars)

On March 25, 2016, IWD issued a decision (reference 05) stating that Byars received an overpayment (\$2,507.25) of UIB from October 11, 2015 to December 26, 2015 because Byars was disqualified. IWD mailed the computer-generated decision to Byars at his address (1- V-, C-, IL) of record. (exhibit M)

The USPS timely delivered the decision letter to Byars. (testimony of Byars)

Byars prepared an appeal letter (dated March 29, 2016) and inserted it into an envelope (return address: PO Box -2, J-, Illinois) to be mailed to IWD. Byars denied receiving a fraudulent overpayment. On April 21, 2016, the USPS postmarked (ZIP 60403) the item of mail. On April 28, 2016, IWD received the item of mail containing Byars' appeal letter. (exhibit O)

Since April 4, 2016, Byars was incarcerated at a correctional facility at 2- E-, Ja-, Illinois. (exhibit F-2-A)

Byars reportedly was scheduled for release from the correctional facility on June 23, 2017. (Byars' September 2016 request for continuance)

## **CONCLUSIONS OF LAW**

Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and the worker's family. See Iowa Code section 96.2.

### Disqualification for failure to meet able/available work requirement.

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that the individual is able to work, is available for work, and is earnestly and actively seeking work. See Iowa Code section 96.4(3).

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. See 871 IAC section 24.22.

An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood. See 871 IAC section 24.22(1).

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. See 871 IAC section 24.22(2).

For those individuals incarcerated in jail, the work release program usually does not meet the availability requirements of Iowa Code section 96.4(3); but the department will review any situation concerning an individual incarcerated in a jail, who can meet the able to work, availability for work, and actively seeking work requirements. See 871 IAC section 24.22(2)"g".

An individual may not be eligible for benefits if the individual has imposed restrictions which leave the individual no reasonable expectation of securing employment. Restrictions may relate to type of work, hours, wages, location of work, etc., or may be physical restrictions. See 871 IAC section 24.22(2)"m".

An individual who is not lawfully authorized to work within the United States will be considered not available for work. See 871 IAC section 24.22(2)"o".

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. The department expects each individual claiming benefits to conduct themselves as would any normal, prudent individual who is out of work. See 871 IAC section 24.22(3).

If a claimant is in jail or prison, such claimant is not available for work. See 871 IAC section 24.23(12).

In the case at issue, on March 23, 2016, IWD issued the decision (reference 04) stating that from October 11, 2015 to December 26, 2015, James Byars was not eligible to receive UIB because Byars was in an AWOL/absconded status and therefore did not meet the availability requirements of the law.

In the March 24, 2016 decision, IWD did not assert that Byars, during the period at issue, was not eligible to receive UIB because Byars was in an AWOL/absconded status and therefore did not meet either the able to work requirements of the law or the earnestly and actively seeking work requirements of the law. Since IWD did not provide adequate notice, the judge need not address whether Byars met either the able to work requirements of the law or the earnestly and actively seeking work requirements of the law.

Byars suggested that during the Summer-Fall of 2015, he considered filing an application [Financial Support Application (470-0462)? (official notice)] for food assistance in the State of Iowa. However, when he saw the question “Is anyone fleeing to avoid prosecution, custody, or jail for a felony crime?”, Byars assumed that he was ineligible to receive food assistance and opted not to file an application.

On October 11, 2015, when Byars was filling out his claim for UIB with IWD, he was not asked on the claim form whether he was fleeing to avoid prosecution, custody, or jail. Byars assumed that his AWOL/absconded status did not disqualify him from receipt of UIB and he filed his claim.

Byars asserted that during the period at issue, he was able to work, was available for work, and was earnestly and actively seeking work.

Byars testified that during the period (October 11, 2015 – December 26, 2015) at issue, when he applied for work with prospective employers, none of the prospective employers specifically asked Byars if Byars was a “fugitive”. Byars did not volunteer the information that he was a fugitive to prospective employers.

IWD adopted a rule (i.e., 871 IAC section 24.23) wherein it listed approximately 35 reasons for a claimant being disqualified for being unavailable for work. In its rule, IWD did not state that the disqualification reasons included, but were not limited to, the following 35 reasons.

Based on a preponderance of evidence, Byars established that from October 11, 2015 to December 26, 2015, he was eligible to receive UIB in spite of his AWOL/absconded status because he met the availability requirements of the law. Iowa Code section 96.4(3); 871 IAC sections 24.22(2) and 24.23.

It is ORDERED that IWD decision (04), dated March 23, 2016, be REVERSED.

#### Overpayment

If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment. See Iowa Code section 96.3(7)"a".

Under Iowa law, if a claimant receives unemployment insurance benefits for which he or she is subsequently determined to be ineligible, IWD must recover those benefits even if the claimant acted in good faith and is not otherwise at fault. IWD may recover the overpayment of benefits by requesting payment from the claimant directly or by deducting the overpayment from any future benefits payable to the overpaid claimant. See 871 IAC section 25.8.

In the case at issue, on March 25, 2016, IWD issued a decision (reference 05) stating that Byars received an overpayment (\$2,507.25) of UIB from October 11, 2015 to December 26, 2015 because Byars was disqualified from receipt of UIB.

In light of the fact that Byars established that from October 11, 2015 to December 26, 2015, he was eligible to receive UIB in spite of his AWOL/absconded status because he met the availability requirements of the law, it is ORDERED that IWD decision (05), dated on March 25, 2016, be REVERSED. Iowa Code section 96.3(7)"a"; 871 IAC section 25.8.

#### **DECISION**

IWD's decisions dated March 23, 2016, reference 04, and March 25, 2016, reference 05, are REVERSED.

CBT