

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JUNIOR M NGELEKA
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL NO. 23A-UI-08958-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/23/23
Claimant: Appellant (2R)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

On September 19, 2023, Junior Ngeleka (claimant) filed a timely appeal from the September 11, 2023 (reference 01) decision that denied benefits for the period beginning July 23, 2023, based on the IWD deputy's conclusion that the claimant was still employed under the same hours and conditions as in the original contract of hire and was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on October 4, 2023. Mr. Ngeleka participated. The employer did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KCCO, DBRO and WAGE-A.

ISSUES:

Whether the claimant was able to work and available for work for the period beginning July 23, 2023.

Whether the claimant was partially and/or temporarily unemployed for the period beginning July 23, 2023.

Whether the employer's account may be charged for benefits for the period beginning July 23, 2023.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Junior Ngeleka (claimant) established an original claim for benefits that was effective July 23, 2023. Iowa Workforce Development (IWD) set the weekly benefit amount at \$582.00. IWD erroneously designated Mr. Ngeleka as a group 5 claimant. The claimant belonged to a workers' union while employed with Tyson Fresh Meats, but that union lacked the ability to place Mr. Ngeleka in any potential job outside of Tyson Fresh Meats.

Mr. Ngeleka established his unemployment insurance claim in response to being discharged by Tyson Fresh Meats, Inc. on July 18, 2023. The employer provided the claimant with a disciplinary action document, dated July 18, 2023, that specifically stated the employer was terminating the employment due to an alleged violation of company policy. Tyson Fresh Meats

has not had work for Mr. Ngeleka since that time and has not recalled the claimant to the employment.

Mr. Ngeleka has made consecutive weekly claims since he set up the July 23, 2023 original claim. He most recently made a weekly claim on October 2, 2023 for the week that ended September 30, 2023. Because IWD erroneously categorized Mr. Ngeleka as a group 5 claim, the weekly claim reporting system has not requested job search information from Mr. Ngeleka as part of the weekly claim reporting process. Mr. Ngeleka began his search for new employment when he learned Tyson Fresh Meats was discharging him from the employment. Mr. Ngeleka has been applying for two or three jobs per week. Mr. Ngeleka has not been keeping a record of his job search. Mr. Ngeleka has been ready, willing and able to return to full-time work since he established the July 23, 2023 original claim.

On September 11, 2023, IWD Benefits Bureau entered a decision that held Mr. Ngeleka was still employed with Tyson Fresh Meats under the same hours and wages as in the original contract of hire. That decision was based on erroneous written information submitted by Equifax on behalf of the employer.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4(3)(a) provides as follows:

96.4 Required findings. An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. a. 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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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:

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 Code section 96.1A(37) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

If a claimant individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

Iowa Administrative Code rule 871-24.2(c)(3) provides as follows:

871—24.2(96) Procedures for workers desiring to file a claim for benefits for unemployment insurance. 24.2(1) Section 96.6 of the employment security law of Iowa states that claims for benefits shall be made in accordance with such rules as the department prescribes. The department of workforce development accordingly prescribes:

...

c. All claimants on an initial claim shall state that they are registered for work and shall list their principal occupation. A group code will be assigned to the claimant to control the type of registration that is made. Code assignments will be based on all facts obtained at the time of the claim filing. A group code change can be made at any time during the benefit year if additional information is obtained by the agency. The group codes are:

...

(3) Group "5" claimants are those individuals who are members of unions, trades, or professionals having their own placement facilities. Claimants assigned to this group will be registered for work. A paid-up membership must be maintained. Contact must be made weekly to check for available work. Loss of membership shall result in an assignment to group "6."

Mr. Ngeleka has been able to work and available for work since he established the original claim for benefits that was effective July 23, 2023. Before he established the claim, Tyson Fresh Meats, Inc. discharged him from employment on July 18, 2023. The claimant has not been attached to that employer or to that employment since July 18, 2023. The claimant has remained ready, willing and able to work since he established the July 23, 2023 original claim. The claimant has conducted an active and earnest search for new employment. The claimant cannot be faulted for IWD's error in categorizing the claimant as a group 5 claimant and IWD associated failure to date to advise the claimant of job search and reemployment activities requirements. The claimant is eligible for benefits for the period beginning July 23, 2023, provided the claimant is otherwise eligible. The employer's liability benefits will be determined in connection with a remand to adjudicate the July 18, 2023 discharge.

IWD shall recategorize the claimant as a group 6 claimant. For each week claimed after the entry of this decision, the claimant is required to engage in four reemployment activities, including at least three job applications. The claimant must keep a complete record of his work search and reemployment activities. The claimant must enter his work search information into the IowaWORKS.gov database and must certify the accuracy of that information prior to making his weekly claim. The claimant should immediately contact his local IowaWorks Center for assistance in learning about and complying with the work search and reemployment activities documentation requirements.

DECISION:

The September 11, 2023 (reference 01) decision is REVERSED. The claimant has been able to work and available for since he established the July 23, 2023 original claim. The claimant has not been attached to employment since he established the July 23, 2023 original claim. The claimant is eligible for benefits for the period beginning July 23, 2023, provided he is otherwise eligible. The employer's liability benefits will be determined in connection with a remand to adjudicate the July 18, 2023 discharge.

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REMAND:

This matter is REMANDED to Iowa Workforce Development Benefits Bureau for a fact-finding interview and decision addressing the July 18, 2023 discharge.



James E. Timberland
Administrative Law Judge

October 5, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.