

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

KELSEY M HAMILTON
Claimant

APPEAL 23A-UI-10426-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 10/22/23
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant/appellant, Kelsey M. Hamilton, filed an appeal from the November 1, 2023 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that issued a work search warning for the week ending October 28, 2023. It denied benefits for that week. A telephone hearing was held on November 27, 2023, at 3:00 p.m. The claimant participated personally. No exhibits were received into the record. The administrative law judge took official notice of the administrative records.

ISSUE:

Did the claimant make an adequate work search for the week ending October 28, 2023, and was the warning appropriate?

FINDINGS OF FACT:

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

The claimant filed an original claim for benefits on October 22, 2023. Her first continuing claim was for the week ending October 28, 2023. The claimant made a keystroke error and indicated that she had not submitted any applications to employers, nor had she attended any workshops that week.

The claimant attended a resume writing workshop conducted by Challenger, a third-party provider, for two hours on October 27, 2023. An agent of Iowa Workforce Development informed the claimant that this activity would not count because it was not offered by Iowa Workforce Development. Nevertheless, the claimant’s resume was revised after the workshop.

On October 26, 2023, the claimant submitted three job applications to three different employers about known openings that aligned with her work experience in customer service, recruiting, and compliance. The claimant will begin work on December 4, 2023, with one of them, Aya Health Care, as a recruiter assistant.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that the claimant has made an active and earnest search for work for the week ending October 28, 2023.

Iowa Code section 96.4(3)a provides:

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 provides, in relevant part:

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.

(1) Able to work. 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.

...

(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.

...

(3) 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.

Iowa Admin. Code r. 871-24.23(28) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(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.

The claimant has sufficiently demonstrated to the satisfaction of the administrative law judge an active and earnest search for work for the week ending October 28, 2023.

The relevant laws are Iowa Code section 96.4(3)a, Iowa Admin. Code r. 871-24.22, and Iowa Admin. Code r. 871-24.23(28). The administrative law judge disagrees with the decision that there is a fixed minimum number of job contacts per week because there is nothing in those laws to suggest there is one. The Iowa Workforce Development Department's own rules clearly state differently. Iowa Admin. Code r. 871-24.22(3) states first a general description:

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.

The decision appealed says the claimant must make four work searches per week, three of which must be job applications. The general description of how the law operates in this section is the opposite of what the department says it is. The law asks for a multi-factored approach and an appreciation for the circumstances the claimant is facing. It lists the various ways that someone can do a work search. See Iowa Admin. Code r. 871-24.22(1) – (7). There is absolutely no basis for categorically ranking applications as higher than other work search activities in that law or other laws relevant to this case. There is also no basis for telling claimants that only workshops conducted by Iowa Workforce Development Department will be considered. See Iowa Admin. Code r. 871-24.22(a)(5) (stating that “any other action” which is found to be an “effective means of looking for work” is considered.)

Iowa Admin. Code r. 871-24.22(3) continues by describing the basic requirements. The highlighted portion also contradicts Iowa Workforce Development Department's position that it is a fixed number of searches for week. Quite the contrary, Iowa Admin. Code r. 871-24.22(3) restates the approach given above that looks at the individual's circumstances.

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. [Emphasis added.]**

This part of the law is opposite the idea of a fixed minimum number of work searches or mandating that three of the work searches be job applications. This is important because most claimants naturally rely on Iowa Workforce Development Department to accurately state the legal requirements for work searches. Accordingly, the warning was not appropriate.

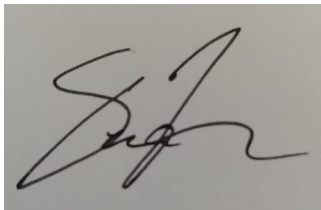
The evaluation is not whether someone has met an arbitrary number Iowa Workforce Development Department has set for everyone by edict through a website. The evaluation is whether this individual is sincerely looking for work as a reasonable unemployed person would given their individual circumstances. This rule was also amended on October 12, 2022. Iowa Workforce Development Department could have made changes to the above sections on that date with other changes. It did not.

The claimant attended a two-hour workshop to revise her resume. The administrative law judge disagrees that this activity does not count because it falls into the broad category of “any other activity” that can be determined to be an effective means of securing work. See Iowa Admin. Code r. 871-24.22(a)(5). If Iowa Workforce Development Department wants only workshops conducted by its staff to count, then it can change the administrative rule.

The remaining work activities comprise job applications made in response to jobs that neatly fit the claimant’s work experience. The claimant ultimately secured one of these jobs and starts next week. The administrative law judge finds the claimant made a sincere effort to look for the work the week ending October 28, 2023. Therefore, the work search warning was inappropriate.

DECISION:

The November 1, 2023 (reference 01), unemployment insurance decision is REVERSED. The claimant made an adequate search for work for the week ending October 28, 2023. Benefits are granted for that week, provided she is otherwise eligible for benefits. The work search is not appropriate. If it has not already been done, the work search warning should be removed from her record.



Sean M. Nelson
Administrative Law Judge II

November 29, 2023
Decision Dated and Mailed

smn/scn

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
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
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> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: 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 se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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