

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**PEGGY S RUSHING
1711 SE 14TH ST
DES MOINES IA 50320**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**Appeal Number: 04A-UI-04100-B4T
OC: 02-01-04 R: 02
Claimant: Appellant (1)**

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 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. 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)

(Decision Dated & Mailed)

Section 96.4-3 – Whether Claimant Failed to Make an Active and Earnest Search for Work

STATEMENT OF THE CASE:

Peggy S. Rushing filed a timely appeal from an unemployment insurance decision dated April 7, 2004, reference 02, which issued a warning based on a finding that she had made no job contacts during the week ending April 3, 2004. After due notice was issued, a telephone hearing was held on April 28, 2004, with Ms. Rushing participating.

FINDINGS OF FACT:

Peggy S. Rushing was employed with RV Specialists, Inc., a business operated by the claimant and Murray D. Rushing from July 1, 1988 through January 16, 2004. The claimant and her husband made a determination to close the business temporarily for the winter months.

Peggy S. Rushing filed an initial claim for benefits having an effective date of February 1, 2004. Subsequently, a decision of the representative dated April 7, 2004, reference 02, was dated and mailed to the claimant. In addition, Murray D. Rushing filed an initial claim for benefits having an effective date of February 1, 2004. Subsequently, a decision of the representative dated April 7, 2004, reference 02, was dated and mailed to Murray D. Rushing, also known as M. Dean Rushing. Each decision warned each of the parties hereto that they were required to make a minimum of two in-person job contacts each week that they claimed unemployment insurance benefits. The record indicated that for the benefit week ending April 3, 2004 each claimant made zero job contacts. At the time of filing their initial claims for benefits, each party was designated as a group 3 claimant who were temporarily unemployed for the period of four consecutive weeks or less due to a lack of work or emergency. Each party was reclassified as a group 2 claimant which required them to make two in-person job contacts each week. Since both parties failed to make two in-person job contacts for the benefit week ending April 3, 2004, the initial warning was mailed to the parties.

REASONING AND CONCLUSIONS OF LAW:

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 24.2(1)h(1), (2) and (3) provide:

Procedures for workers desiring to file a claim for benefits for unemployment insurance.

(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:

h. Effective starting date for the benefit year.

(1) Filing for benefits shall be effective as of Sunday of the current calendar week in which, subsequent to the individual's separation from work, an individual reports in person at a workforce development center and registers for work in accordance with paragraph "a" of this rule.

(2) The claim may be backdated prior to the first day of the calendar week in which the claimant does report and file a claim for the following reasons:

Backdated prior to the week in which the individual reported if the individual presents to the department sufficient grounds to justify or excuse the delay;

There is scheduled filing in the following week because of a mass layoff;

The failure of the department to recognize the expiration of the claimant's previous benefit year;

The individual is given incorrect advice by a workforce development employee;

The claimant filed an interstate claim against another state which has been determined as ineligible;

Failure on the part of the employer to comply with the provisions of the law or of these rules;

Coercion or intimidation exercised by the employer to prevent the prompt filing of such claim;

Failure of the department to discharge its responsibilities promptly in connection with such claim, the department shall extend the period during which such claim may be filed to a date which shall be not less than one week after the individual has received appropriate notice of potential rights to benefits, provided, that no such claim may be filed after the 13 weeks subsequent to the end of the benefit year during which the week of unemployment occurred. In the event continuous jurisdiction is exercised under the provisions of the law, the department may, in its discretion, extend the period during which claims, with respect to week of unemployment affected by such redetermination, may be filed.

(3) When the benefit year expires on any day but Saturday, the effective date of the new claim is the Sunday of the current week in which the claim is filed even though it may overlap into the old benefit year up to six days. However, backdating shall not be allowed at the change of the calendar quarter if the backdating would cause an overlap of the same quarter in two base periods. When the overlap situation occurs, the effective date of the new claim may be postdated up to six days. If the claimant has benefits remaining on the old claim, the claimant may be eligible for benefits for that period by extending the old benefit year up to six days.

The evidence in the record clearly establishes that the employer changed its status from a temporary unemployment situation to that of a permanent unemployment situation. Each of the claimant's group codes were changed to group 2 which would require them to make two in-person job contacts each week.

The failure of each party, Peggy S. Rushing and Murray D. Rushing, to make in-person job contacts for the benefit week ending April 3, 2004 resulted in the warning being issued to both claimants. The warning does not affect their ability to receive benefits for any benefit week. The record does not justify a conclusion that the decision should be vacated or set aside.

The administrative law judge concludes that Peggy S. Rushing and Murray D. Rushing should be warned to make a minimum of two in-person job contacts each week they claimed unemployment insurance benefits.

DECISION:

The decision of the representative dated April 7, 2004, reference 02, involving Peggy S. Rushing is affirmed. Unemployment insurance benefits are allowed to the claimant, provided she is otherwise eligible under the provisions of the Iowa Employment Security Law.

tjc/b