

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

AMY S EICHELBERGER
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**APPEAL 24A-UI-04824-SN-T
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/05/24
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant/appellant, Amy S. Eichelberger, filed an appeal from the May 14, 2024 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision which issued a work search warning for the week ending May 11, 2024. It did not deny benefits. The parties were properly notified of the hearing. A telephone hearing was held on June 5, 2024, at 10:00 a.m.

The claimant participated personally. were received into the record. Exhibits A and B were received into the record.

ISSUE:

Did the claimant make an adequate work search for the week ending May 11, 2024, 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 initial claim for benefits on May 5, 2024. The claimant filed for benefits because she was separated from her employment at Kent Shared Services LLC. The claimant was working as an inventory technician there.

She was terminated because she could no longer perform the duties of her position due to a seizure disorder. The claimant provided a copy of a release she received from her physician dated April 29, 2024. The release prohibited her from operating a motor vehicle or heavy machinery. It also forbids her from climbing higher than three feet. It also forbids her from lifting objects heavier than 20 pounds.

The claimant filed a continuing claim for benefits for the week ending May 11, 2024. The claimant only applied to one position that week. This was a remote work position at NDS Company LLC that she found on the website Indeed. She did not hear back from this employer.

The claimant said she could not find other work that would work within her work restrictions. The claimant also wanted to secure work related to the information technology field. The claimant spent approximately one hour that week looking for work.

Beginning on May 28, 2024, the claimant enrolled at Muscatine Community College to pursue a degree in information technology. She became a full-time student on that day.

By the end of May 2024, the claimant learned the Muscatine, Iowa's public transportation routes. She has also spoken with acquaintances to get rides from them if she is given a job.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that the claimant did not make an active and earnest search for work for the week ending May 11, 2024. As a result, the work search warning was appropriate.

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 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). Nowhere in those laws does it state that three of the claimant's work searches must be applications. The Iowa Workforce Development Department's own rules clearly state differently. Iowa Admin. Code r. 871-24.22(3) states first a general description:

b. Number of employer contacts

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 number of contacts that an individual must make is dependent upon the condition of the local labor market, the duration of the benefit payments, a change in the individual's characteristics, job prospects in the community, and other factors as the department deems necessary. [Emphasis added.]**

The standard work search warning decision 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 is not what the standard work search warning decision 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.

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.

1. 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]

Assigning a fixed minimum number of work searches or mandating that three of the work searches be job applications has no basis in law. This is important because most claimants naturally rely on Iowa Workforce Development Department to accurately state the legal requirements for work searches. The Iowa Supreme Court has noted that relying on an agency manual as authority regarding the substantive rights of citizens is not permitted. See *Anderson v. Iowa Dept. of Human Services*, 368 N.W.2d 104, 108 (Iowa 1985). The creator of the Iowa Administrative Procedures Act, Arthur Bonfield gave the following rationale for agencies:

The only caveat is that any final product they adopt which will **substantially affect the public or any segment thereof**, must be promulgated with all the procedural niceties required for the rules. This is so whether that final product defining law or policy of general applicability is denominated a “memorandum, directive, manual or [any] other communication.”¹ [Emphasis added]

The work search requirements are substantial to both the public’s interests generally and each individual claimant in the unemployment insurance benefit system. It ensures that those claiming benefits return to the workforce as quickly and efficiently as possible, yet still receive the emergency benefit during that efficacious search.

The evaluation is not whether someone has met an arbitrary number Iowa Workforce Development Department has set for everyone statewide. The evaluation is whether this individual is sincerely looking for work, as a reasonable unemployed person would, given their individual circumstances. The Iowa Legislature attempted to pass a law to give Iowa Workforce Development Department the ability to maintain these minimum thresholds. See Senate File 2106 (stating minimum requirements consistent with the language on work search warning decisions.) It did not pass.

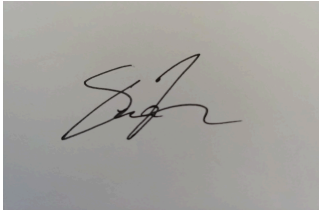
This case is instructive for why a minimum standard is not appropriate. In this case, the claimant presents real physical limitations on her ability to work in many jobs. On the other hand, the claimant has a genuine desire to change her career path to improve her long-term employment potential. The minimum work search standard offers no flexibility to even consider these circumstances, despite the plain meaning of the law saying expressly they must be considered.

Nevertheless, I find the work search warning appropriate here because she said she only spent one hour total on her search for work that week. I find it unlikely that she would know the full scope of potential work within her limitations within that time frame. Furthermore, I find the claimant could have spent more time working on her ability to commute that week, which in turn could have increased how many jobs she could apply for. In other words, I don’t find a one-hour search a sincere or earnest one with the expectation that that one application will lead to a job soon. The work search warning was appropriate.

¹ Bonfield, *Administrative Procedures Act*, 60 Iowa L.Rev. 731, 835 (1975) (citing 17A.2(7)(c)).

DECISION:

The May 14, 2024 (reference 02), unemployment insurance decision is AFFIRMED. The claimant did not make an adequate search for work for the week ending May 11, 2024. Therefore, the work search warning was appropriate.

A rectangular box containing a handwritten signature in black ink. The signature is stylized and appears to read 'Sean M. Nelson'.

Sean M. Nelson
Administrative Law Judge II

June 6, 2024
Decision Dated and Mailed

SMN/jkb

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