

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

RONALD H KEHLER
4019 OAK VALLEY DR NE
CEDAR RAPIDS IA 52411

IOWA WORKFORCE
DEVELOPMENT DEPARTMENT

Appeal Number: 05A-UI-06446-RT
OC: 06/05/05 R: 03
Claimant: Appellant (2)

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 – Required Findings (Actively Seeking Work)

STATEMENT OF THE CASE:

The claimant, Ronald H. Kehler, filed a timely appeal from an unemployment insurance decision dated June 14, 2005, reference 01, warning the claimant that he is required to make two in-person job contacts each week he claims unemployment insurance benefits and failed to do so for benefit week ending June 11, 2005. It is not now necessary to set this matter for a hearing, because the claimant has been approved to submit résumés in lieu of in-person contacts and he had submitted a résumé for the week in question. Accordingly, no hearing was held. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having examined all of the evidence in the record, the administrative law judge finds: The claimant was warned by a decision dated June 14, 2005, reference 01, concerning his obligation to make a minimum of two in-person job contacts each week that he seeks unemployment insurance benefits, because he had indicated on his claim for unemployment insurance benefits for benefit week ending June 11, 2005, that he had made fewer than two in-person job contacts that week. However, the claimant actually had one in-person job contact and he sent two resumes to potential employers. The claimant's qualification and work history is specialized in the ocean shipping industry, and there are no such firms or companies in Iowa, making it necessary for the claimant to apply for jobs in his area of work by résumé. The claimant has now been approved by Iowa Workforce Development to apply for such jobs by résumé rather than in-person.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant should be warned for failing to make two in-person job contacts for the week ending June 11, 2005. The claimant should not be warned.

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".

The administrative law judge concludes that the claimant has the burden of proof to show that he is earnestly and actively seeking work under Iowa Code section 96.4-3 or is otherwise excused. New Homestead v. Iowa Department of Job Service, 322 N.W.2d 269 (Iowa 1982). The administrative law judge concludes that the claimant has met his burden of proof to demonstrate by a preponderance of the evidence that he is and was earnestly and actively seeking work. For benefit week ending June 11, 2005, when the claimant reported his weekly claim by telephone, he indicated that he had only made one in-person job contact. However, the claimant had actually made three contacts with employers, one in person and two by résumé or application. The claimant's qualifications and work history are specialized in the ocean shipping industry, and there are no such employers in Iowa and, therefore, the positions to which the claimant applies lend themselves to job applications or résumés. The claimant has also been approved by Iowa Workforce Development to apply for jobs by résumé or application. 871 IAC 24.22(3) provides that 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 rule continues that the circumstances in each case are considered in determining whether an earnest and active search for work has been made. The rule further provides that making application with employers as may reasonably be expected to have openings suitable to

the claimant constitutes a reasonable means of securing work under the facts and circumstances of the claimant's particular situation. The administrative law judge concludes that, under the facts of this particular situation concerning the claimant, the claimant's applications for work through résumés were reasonable means of securing work and that, in effect, he made three suitable and appropriate job contacts; one by in-person contact and two by résumé or application. The administrative law judge notes that Iowa Workforce Development approved the claimant applying for jobs using an application or résumé without an in-person contact and that the positions applied for by the claimant are ones that are conducive to application by résumé. Accordingly, the administrative law judge concludes that the claimant made an earnest and active search for work for benefit week ending June 11, 2005, and, as a consequence, he should not be warned for a failure to do so. Therefore, the administrative law judge concludes that the warning the claimant received was not deserved and should be expunged from the record.

DECISION:

The representative's decision of June 14, 2005, reference 01, is reversed. The claimant, Ronald H. Kehler, made an active and earnest search for work for benefit week ending June 11, 2005, and, as a consequence, the warning received by the claimant should be expunged from his record. The claimant remains entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

kjw/kjw