

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEREMIAH M KANNEH
Claimant

APPEAL 18A-UI-02553-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 09/24/17
Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Able and Available/Work Search
Iowa Admin. Code r. 871-24.22(3) – Earnest and Active Search for Work
Iowa Admin. Code r. 871-24.23(28) – Work Search Warning

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 13, 2018, (reference 12) unemployment insurance decision that denied benefits based upon a determination that claimant did not make two work searches for the week ending January 27, 2018. The parties were properly notified of the hearing. A telephone hearing was held on March 21, 2018. The claimant, Jeremiah M. Kanneh, participated. The administrative law judge took official notice of the administrative record.

ISSUE:

Did the claimant make an adequate work search for the week ending January 27, 2018, and is a warning appropriate?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed a claim for benefits for the one-week period ending January 27, 2018. That week, claimant reported that he only made one job contact. Claimant had spoken with someone at the local Iowa Workforce Development office, and this person told claimant he only needed to make one job contact since he obtained part-time employment. Claimant now understands that he is required to make two job contacts during each week for which he files a claim for benefits. Claimant received one warning in the past regarding the requirement to make his job contacts in-person. This warning was issued when claimant was coded as group code 2. That requirement was changed for claimant, and a letter was sent to him notifying him of that change. Claimant is now coded as group code 6.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant has not made an active and earnest search for work but was available for work during the week ending January 27, 2018. A warning is appropriate, but disqualification is not appropriate. Benefits are allowed.

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".

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.

Iowa Admin. Code r. 871-24.22(3) provides:

Benefit 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.

24.22(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.

b. Number of employer contacts. It is difficult to determine criteria in which earnestly and actively may be interpreted. Much depends on the estimate of employment opportunities in the area. The number of employer contacts which might be appropriate in an area of limited opportunities might be totally unacceptable in another area of unlimited opportunities. The number of contacts that an individual must make is dependent upon the condition of the local labor market, the duration of benefit payments, a change in the individual's characteristics, job prospects in the community, and other factors as the department deems necessary.

...

d. Week-to-week disqualification. Active search for work disqualifications are to be made on a week-to-week basis and are not open-end disqualifications...

This rule is intended to implement Iowa Code section 96.4(3).

The September 2017, *Unemployment Insurance Benefits Handbook*, provides in pertinent part at pages 18 and 19:

CONTINUED ELIGIBILITY

Work Search Requirements Unless waived by IWD, individuals are required to make a minimum of two job contacts each week. The work search requirement may be waived if an individual is temporarily unemployed and expects to be recalled by their former employer within a reasonable period of time or is in school and approved for Department Approved Training (DAT). The work search requirement will be determined each time a claim is filed.

In order to meet the work search requirements, individuals must make two job contacts between Sunday and Saturday of the week they are claiming benefits. Contacts may be made in person, online, by mail, email or faxing résumés or applications. Telephone calls are not acceptable. The work search must be a reasonable and honest effort to find suitable work. Failure to perform an honest effort (sic) work search may result in the denial of benefits.

Individuals must be willing to accept a reasonable wage for the job for which they are applying. A (sic) individual may not apply for the same position with the same employer more than once every six weeks.

Individuals must keep a written record of all work search contacts for a period of one year and be ready to provide a copy if requested by IWD. Failure to comply may result in denial of benefits.

The information needs to include:

- Date of the contact
- Company name, address and phone number
- Contact name
- Method of contact ie. (sic) in person, online, email, mail
- Results of contact

IWD recommends using the form provided at the back of this book.

Members of a union hiring hall are required to be in good standing and must contact the union in accordance to hall rules.

In this case, claimant was erroneously informed that he only needed to make one job contact for the week ending January 27, 2018. Claimant now understands that he must make two job contacts each week if he is filing for unemployment insurance benefits, even if he is working a part-time job. It appears from the administrative record that claimant was initially coded as group code 2, requiring him to make two in-person job contacts. The agency unilaterally changed claimant's group code to group code 6 effective January 30, 2018. Therefore, the administrative law judge believes claimant did not have any prior valid warnings related to the work search requirement. This decision should function as a warning to claimant to make a minimum of two job contacts each week during every week for which he files for benefits. Benefits are allowed.

DECISION:

The February 13, 2018, (reference 12) unemployment insurance decision is reversed. The claimant did not make an active and earnest search for work for the week ending January 27, 2018. Claimant had not been previously warned about the requirement to make two job contacts. Therefore, while a warning is appropriate, disqualification is not appropriate.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn