

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

BRIAN P ONTHANK
Claimant

APPEAL NO. 22A-UI-19720-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 11/06/22
Claimant: Appellant (3R)**

Iowa Code Section 96.4(3) – Able & Available, Work Search Requirement

STATEMENT OF THE CASE:

On December 14, 2022, Brian Onthank (claimant) filed a timely appeal from the December 7, 2022 (reference 01) decision that reminded the claimant he was required to engage in four reemployment activities, including three job applications, each benefit week and that warned the claimant could be disqualified for benefits for future weeks in which the claimant did not meet the work search requirement. After due notice was issued, a hearing was held on January 10, 2023. Claimant participated. Exhibit A, the online appeal, was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO and DBRO.

ISSUES:

Whether the claimant was able to work and available for work during the week that ended December 3, 2022.

Whether the claimant engaged in an active and earnest search for new employment and met the reemployment activities requirements during the week that ended December 3, 2022.

FINDINGS OF FACT:

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

Brian Onthank (claimant) established an original claim for benefits that was effective November 6, 2022. At the time the claimant established the original claim for benefits, the application process required the claimant acknowledge an obligation to read, know and follow the information contained in the Unemployment Insurance Claimant Handbook. The claimant did not review the Handbook.

The claimant's work experience includes working in a warehouse, managing a grocery store department, and managing a restaurant.

The claimant filed weekly claims that included a claim for the week that ended December 3, 2022. During the week that ended December 3, 2022, the claimant applied for three jobs. The claimant applied for a human resources business partner position despite a lack of relevant academic credentials and a lack of relevant professional credentials. The claimant applied for a

hazardous materials (hazmat) commercial truck driving position despite lacking the required commercial driver's license (CDL) and lacking the additional hazmat endorsement. The claimant also applied for a payroll clerk position. The claimant applied for no other jobs that week. The claimant did not engage any additional Iowa Workforce Development recognized reemployment activities. The claimant completed an employment interest questionnaire and assumed, without checking the handbook or with IWD, that the questionnaire would count as a reemployment activity. That claimant had not by that time familiarized himself with the weekly reporting requirements concerning IowaWORKS.gov. When the claimant made his weekly claim for the weekly claim for the week ending December 3, 2022, the system recorded zero employment contacts and zero reemployment activities.

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".

Iowa Admin. Code r. 871-24.22(2) provides:

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.

(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.

Iowa Admin. Code r. 871-24.23(27) provides:

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

(27) Failure to report on a claim that a claimant made any effort to find employment will make a claimant ineligible for benefits during the period. Mere registration at the workforce development center does not establish that a claimant is able and available for suitable work. It is essential that such claimant must actively and earnestly seek 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.

At the time the claimant established the original claim for benefits, the application process required the claimant acknowledge an obligation to read, know and follow the information contained in the Unemployment Insurance Claimant Handbook. The portion of the handbook regarding Continued Eligibility begins with the following notice:

WORK SEARCH REQUIREMENTS

NOTICE: AS OF JANUARY 9TH, 2022, REEMPLOYMENT ACTIVITIES REQUIREMENTS CHANGED FROM TWO (2) TO FOUR (4). THREE (3) OF THOSE REEMPLOYMENT ACTIVITIES ARE REQUIRED TO BE JOB APPLICATIONS. YOU ARE REQUIRED TO CREATE AN IOWAWORKS PROFILE AND CERTIFY YOUR REEMPLOYMENT ACTIVITIES. YOU WILL UTILIZE IOWAWORKS TO CERTIFY YOUR REEMPLOYMENT ACTIVITIES. YOU ARE REQUIRED TO CERTIFY YOUR REEMPLOYMENT ACTIVITIES PRIOR TO FILING YOUR WEEKLY CLAIM.

Unemployment Insurance Claimant Handbook 2022. In addition, the confirmation page at the end of the initial application process would have provided similar information.

Iowa Workforce Development has published the reemployment activities requirements on the agency's website, as follows:

Acceptable Reemployment Activities

At least three of the four activities reported each week must be one of these:

- Apply for a potential job opening by submitting a resume or application through any of the following methods:
 - Online
 - In Person
 - Email
 - Fax/mail
- Take a Civil Service exam

Any of the following activities also can be reported to meet a claimant's reemployment activity requirements for a given week. (The total number of activities must be four or more, including at least three from the above list.)

- Create a reemployment plan (RESEA or other programs).

- Attend any IowaWORKS workshop.
- Attend a job fair sponsored by IowaWORKS or partners (Keep the flyer or advertisement).
- Appointment with a Career Planner at an IowaWORKS office.
- Appointment with a core WIOA partner (vocation rehabilitation services, adult education & literacy, employment services, training/education).
- Mock Interview at IowaWORKS.
- Attend a scheduled career networking meeting with IowaWORKS office.
- Register with a placement facility of a school or college.
- Interview for a job (virtually, in person, or at a job fair).
- Veterans may submit a resume to Home Base Iowa (HomeBaselowa.gov).

See <https://www.iowaworkforcedevelopment.gov/rcm-faq>.

The claimant did was not available for work within the meaning of the law during the week that ended December 3, 2022 and is not eligible for benefits for that week. During that week the claimant's work search was neither active nor earnest. During that week, the claimant applied for three jobs. The claimant was clearly unqualified for the hazmat commercial truck driving position and for the human resources business partner position. This would have been readily evident to the claimant at the time he applied for those positions. The claimant was going through the motions, intentionally applying for positions he knew he was not qualified to perform and that he had no chance of being hired to perform. The claimant applied for only one job for which he may have been qualified, payroll clerk. The claimant did not engage in any additional reemployment activities recognized by Iowa Workforce Development. The work search warning was appropriate. The disingenuous job applications warrant disqualification for the week in question and a remand for additional scrutiny of the claimant's work search activities.

DECISION:

The December 7, 2022 (reference 01) decision is MODIFIED adverse to the claimant/appellant. The work search warning was appropriate. In addition, the claimant was not available for work within the meaning of the law during the week that ended December 3, 2022 and is not eligible for benefits for that week. During that week the claimant's work search was neither active nor earnest. The disingenuous job applications warrant disqualification for the week in question and a remand for additional scrutiny of the claimant's work search activities.

REMAND:

This matter is REMANDED to Iowa Workforce Development Benefits Bureau for entry of an overpayment decision regarding the \$551.00 in benefits the claimant received for the week that ended December 3, 2022. The matter is also REMANDED for consideration of whether the claimant engaged in an active and earnest search each week of the claim other than the December 3, 2022 benefit week end addressed in the present decision.



James E. Timberland
Administrative Law Judge

January 18, 2023
Decision Dated and Mailed

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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
4th Floor – Lucas Building
Des Moines, Iowa 50319
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>.

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
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: 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 está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

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 una de las partes enumeradas.