

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PATRICIA A CHUMBLEY
Claimant

APPEAL 22A-UI-03284-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 12/05/21
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code section 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(3) – Work Search Requirements

STATEMENT OF THE CASE:

The claimant/appellant, Patricia Chumbley, filed an appeal from the January 6, 2022 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision that issued a warning to the claimant reasoning that her work search log was deficient. The parties were properly notified of the hearing. A telephone hearing was held on March 3, 2022.

The claimant participated personally. Re-Employment Career Planner Maria Cortez participated on behalf of Iowa Workforce Development (“IWD”). Exhibits D-1, D-2, 1, 2, and 3 were received into the record. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records.

ISSUES:

Whether the claimant’s appeal is timely? Whether the claimant’s appeal has reasonable grounds to be considered otherwise timely?

Is the warning issued to the claimant regarding her work search log appropriate?

FINDINGS OF FACT:

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

On December 27, 2021, the claimant was sent a notice to report for a Re-employment Services and Eligibility Assessment on January 5, 2022. (Exhibit 1)

On January 5, 2022, the claimant provided Re-Employment Career Planner Maria Cortez with her work search log for the weeks ending December 11, 2021, December 18, 2021, December 25, 2021, and January 1, 2022. For the week ending December 11, 2021, the claimant wrote she contacted employers, the Eagles Club and Pappa Joe’s. Both entries state these employers were not hiring. The claimant did not make any other employer contacts that week according to her work log. (Exhibit 2)

Effective September 8, 2020, work search requirements were reinstated. In addition to making two job search contacts per week, claimants are required to document their contacts and produce the documentation upon request of IWD.

The claimant handbook and IWD website outline the requirements for a job search log:

You must keep a work search log of all work search contacts for a period of one year after you stop claiming benefits and be ready to provide a copy if requested by IWD. Failure to comply may result in denial of benefits.

The work search record needs to include:

- Date of the contact
- Company name, address and phone number
- Contact name
- Method of contact i.e. in person, online, email, mail
- Results of contact

See: <https://www.iowaworkforcedevelopment.gov/continued-eligibility>

The following section describes the findings of fact regarding the timeliness issue:

A disqualification decision was mailed to the claimant's address of record on January 6, 2022. The claimant received the decision on that date. (Exhibit D-1) The decision warned that it became final unless an appeal was filed on or before January 16, 2022. January 16, 2022 fell on a Sunday, so the final date for appeal was on January 17, 2022.

The claimant sent her appeal by facsimile at 1:37 p.m. and 1:38 p.m. on January 15, 2022, to (515) 478 – 3528, the facsimile number for the Appeals Bureau. These facsimile transmissions were not received.

The claimant sent her appeal by facsimile at 11:09 a.m. on January 17, 2022. This facsimile was also not received.

The claimant sent her appeal by facsimile at 8:11 a.m., 2:37 p.m., 2:38 p.m., 2:40 p.m., 2:50 p.m. and 4:43 p.m. on January 18, 2022. This facsimile was also not received. The claimant provided transmittal reports verifying these facsimile transmissions were made. (Exhibit A)

On January 21, 2022, the claimant sent an email to the Appeals Bureau's email address. (Exhibit D-2)

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of issuance of the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such

notifications. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was issued, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The appellant's attempt to file an appeal in a timely manner was thwarted by the busy fax line and was not due to delay by the party. The appeal was filed within a reasonable time thereafter. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the warning given to the claimant was appropriate.

For an unemployed individual to be eligible to receive benefits, she must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that she is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22.

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. 871-24.23(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.

(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.

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.

c. Union and professional employees. Members of unions or professional organizations who normally obtain their employment through union or professional organizations are considered as earnestly and actively seeking work if they maintain active contact with the union's business agent or with the placement officer in the professional organization. A paid-up membership must be maintained if this is a requirement for placement service. The trade, profession or union to which the individual belongs must have an active hiring hall or placement facility, and the trade, profession or union must be the source customarily used by employers in filling their job openings. Registering with the individual's union hiring or placement facility is sufficient except that whenever all benefit rights to regular benefits are exhausted and Iowa is in an extended benefit period or similar program such as the federal supplemental compensation program, individuals must also actively search for work; mere registration at a union or reporting to union hiring hall or registration with a placement facility of the individual's professional organization does not satisfy the extended benefit systematic and sustained effort to find work, and additional work contacts must be made.

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.

e. Seniority rights. An individual who fails to exercise seniority rights to replace another employee with less seniority has the work search requirement waived during a period of regular benefits. This waiver does not apply to the individual who is receiving extended benefits or similar federal program benefits.

f. Search for work.

(1) The Iowa law specifies that an individual must earnestly and actively seek work. This is interpreted to mean that a registration for work at a workforce development center or state employment service office in itself does not meet the requirements of the law. Nor is it interpreted to mean that every individual must make a fixed number of employer contacts each week to establish eligibility. 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 claimant characteristics, job prospects in the community, and such other factors as the department deems relevant.

(2) The individual is referred to suitable work, when possible, to those employers who have outstanding requests with the department of workforce development for referrals. The individual must meet the minimum lawful requirements of the employer. The individual applies to and obtains the signatures of the employer so designated on the form provided, unless the employer refuses to sign the form. The individual must return the form to the department as directed. The individual's failure to obtain the signature of designated employers, who have not refused to sign the form, disqualifies the individual from future benefits until requalified by earning ten times the weekly benefit amount.

(3) The group assignment of individuals is used, to a certain extent, in determining which ones are required to make personal applications for work. Other factors, however, such as the condition of the local labor market, the duration of benefit payments, and a change in claimant characteristics, are also taken into consideration on a weekly basis.

(4) Individuals receiving partial benefits are exempt from making personal applications for work, in any week they have worked and received wages from their regular employer. Individuals involved in hiring hall practices must keep in weekly touch with the business agent of that union in which they maintain membership. All other individuals must make contacts with such frequency as the department considers advisable, after considering job prospects in the community, the condition of the labor market and any other factors which may have a bearing on the individual's reemployment. A sincere effort must be made to find a job. A contact made merely for the sake of complying with the law is not good enough.

g. Reverse referral. A reverse referral is defined as an employer hiring only through the department of workforce development and all individuals applying for employment with the employer are referred to the department. An individual may use the department as work contacts during a week with the employer's name and the workforce development employee's name listed as the individual contacted. The workforce development center must be contacted in person by the individual to utilize each reverse referral registration job contact.

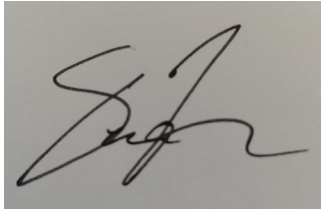
h. Job search assistance. Job search assistance classes, including reemployment services, which are sponsored by the department of workforce development and attended by the individual during a week may be counted as one of the individual's work search contacts for that week.

Iowa Admin. Code r. 871-24.22(3)(1) states, "Making application with employers **as may reasonably be expected to have openings suitable to the individual,**" counts as an employer contact. The applications the claimant submitted to the Eagles Club and Pappa Joe's were deficient because the claimant concedes these employers were not hiring at the time. If these employers were not hiring, then the claimant could not have possibly had a reasonable expectation of them hiring her for a position. Given these circumstances, the warning issued to the claimant was appropriate.

During the hearing, the claimant stated that this should be seen as an honest mistake. She contends she should get a second chance. The administrative law judge notes that she is only being issued a warning and that affords her a second chance.

DECISION:

The January 6, 2022 (reference 02) unemployment insurance decision is affirmed. The warning issued to the claimant was appropriate.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is written over a light gray rectangular background.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

March 24, 2022
Decision Dated and Mailed

smn/scn