

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

JEFFREY S OULMAN
Claimant

APPEAL NO: 19A-UI-00941-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 12/02/18
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 23, 2019, (reference 03) unemployment insurance decision that warned claimant to make at least two work search contacts per week. The claimant was properly notified about the hearing. A telephone hearing was held on February 15, 2019. The hearing was held jointly with 19A-UI-00940-JCT. The claimant participated personally. The administrative law judge took official notice of the administrative records including the fact-finding documents. Department Exhibit D-1 was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant make an adequate work search for the week ending January 19, 2019, and was the warning appropriate?

FINDINGS OF FACT:

The claimant established his claim with an effective date of December 2, 2018, while he was on an approved leave of absence. He was originally a group 3 code, which meant he was temporarily unemployed and his work search waived. His employer initiated separation on January 11, 2019. The claimant was unaware that his code had changed to a group code 6, which required weekly job search contacts. The claimant did not receive notification from IWD that he was required to make a job search effective January 13, 2019 until the work search warning decision, dated January 23, 2019, was mailed.

During this week, since he had learned of his permanent separation by the employer, he did make two job search contacts, and continues to look for employment in an indoor setting, involving sales, inventory or purchasing, consistent with his employment history. His only restriction to employment is a 50 pound lifting restriction.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant has made an active and earnest search for work. Therefore, the warning was inappropriate.

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 in pertinent part:

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:

The claimant has sufficiently demonstrated to the satisfaction of the administrative law judge an active and earnest search for work for the week ending January 19, 2019. Accordingly, the warning was inappropriate and shall be removed.

DECISION:

The January 23, 2019, (reference 03) unemployment insurance decision is reversed. The claimant did make an active and earnest search for work for the week ending January 19, 2019. Therefore, the warning was inappropriate.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn