

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTIE D LEWISTON
Claimant

APPEAL NO. 15A-UI-08508-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 12/21/14
Claimant: Appellant (1)

Section 96.4-3 – Able and Available for Work
Iowa Admin. Code r. 871-24.22(3) – Active Work Search

STATEMENT OF THE CASE:

Kristie Lewiston, the claimant, filed a timely appeal from a representative's decision dated July 24, 2015, reference 03, which denied unemployment insurance benefits from July 5, 2015 through July 11, 2015 upon a finding that the claimant did not make an active search for work that week. After due notice was provided, a telephone hearing was held on August 20, 2015. Ms. Lewiston participated.

ISSUE:

At issue is whether the claimant made an active work search for the period July 5, 2015 through July 11, 2015.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Kristie Lewiston opened a claim for unemployment insurance benefits with an effective date of December 21, 2014 after being separated from her employment with United Airlines. Ms. Lewiston began claiming and receiving unemployment insurance benefits, after severance pay was deducted.

Ms. Lewiston secured employment with the Norwalk Community School District shortly thereafter. Ms. Lewiston worked an average of 20 hours per week in a secretarial position in the transportation division of the school district and claimed partial unemployment insurance benefits based upon her previous full-time employment with United Airlines. On or about March 17, 2015, Ms. Lewiston received a decision from Iowa Workforce Development denying her request to have her claim re-evaluated as a business closure. Because Ms. Lewiston wanted more information, she contacted a representative at Iowa Workforce Development via telephone to make further inquiries. At that time, Ms. Lewiston explained that she had been working for the Norwalk Community School District and explained the number of working hours she was assigned each week. Ms. Lewiston testified that she was specifically told by the Iowa Workforce Development representative that because she was partially unemployed, it would be

unnecessary for her to contact other perspective employers looking for work each week that she claimed benefits. Ms. Lewiston relied on this information and continued to claim partial unemployment insurance benefits each week.

For the week of July 5, 2015 through July 11, 2015, Ms. Lewiston claimed unemployment insurance benefits although she did not work for the school district. Ms. Lewiston had chosen not to work that week and had taken time off work and was not paid, nonetheless Ms. Lewiston claimed unemployment insurance benefits for that week although she had, in effect, been voluntarily unemployed that week.

Subsequently, Ms. Lewiston had a conversation with a different Iowa Workforce Development employee who more fully explained to Ms. Lewiston the requirement that she report a work search each week that she claimed partial unemployment insurance benefits, because Ms. Lewiston had previously been employed full time, and had not yet secured full-time employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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".

An otherwise eligible claimant is eligible to receive benefits with respect to any week only if the evidence indicates that the claimant is able to work, is available for work, and is earnestly and actively seeking work. Iowa Code section 96.4(3) and 871 IAC 24.22. The claimant bears the burden of establishing the claimant meets the above requirements. 871 IAC 24.22. The above requirements may be waived if the evidence indicates that the individual is partially unemployed, while employed at the individual's regular job or temporarily unemployed. Iowa Code section 96.4(3). An individual shall be deemed partially unemployed in any week in which, while employed at the individual's then regular job, the individual works less than full time and in which the individual earns less than the individual's weekly benefit amount plus \$15.00. Iowa Code section 96.19(38)(b).

871 IAC 24.22(2) provides that to satisfy the availability requirement of the law, an individual must be willing, able, and ready to accept suitable work which the individual does not have good cause to refuse.

In the case at hand, it may have been reasonable for the claimant to believe that she was not required to contact two perspective employers each week that she claimed benefits and report those contacts, based upon previous inaccurate information that had been supplied to her by an Iowa Workforce Development employee. The claimant had informed the department employee that she was employed part time with the Norwalk Community School District.

For the week in question, however, the evidence in the record establishes that Ms. Lewiston chose not to work for the school district for the week of July 5, 2015 through July 11, 2015 although regular part-time employment was apparently available to her. The claimant, therefore, in effect, became voluntarily unemployed for that week even from her part-time job. Because the claimant had chosen not to be employed that week, she was not partially unemployed and needed to demonstrate that she was earnestly and actively seeking work and attached to the labor market by contacting perspective employers for employment and being able to report the contacts to Iowa Workforce Development, if she chose to claim unemployment insurance benefits for that week. The administrative law judge concludes that Ms. Lewiston did not attempt to fraudulently claim benefits but misunderstood her obligations to actively and earnestly seek work that week because Ms. Lewiston now understands that she must seek work each week that she claims unemployment insurance benefits.

DECISION:

The representative's decision dated July 24, 2015, reference 03, is affirmed. Claimant is not eligible to receive unemployment insurance benefits from July 5, 2015, through July 11, 2015. Claimant did not make an adequate work search for work that week.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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