

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

AUSTIN R HENKEL
Claimant

APPEAL NO. 23A-UI-00402-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 11/13/22
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

On January 6, 2023, Austin Henkel (claimant) filed a timely appeal from the January 4, 2023 (reference 02) 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 he could be disqualified for benefits for future weeks in which he did not meet the work search requirement. The reference 02 decision referred to the weekly claim for the week ending December 31, 2022 as the basis for the work search warning decision. After due notice was issued, a hearing was held on February 1, 2023. Claimant participated. The hearing in this matter was consolidated with the hearing in Appeal Number 23A-UI-00401-JT-T. Exhibit A, the emailed appeal, was received into evidence. The administrative law judge took official notice of the following Iowa Workforce Development administrative records: the reference 01 and 02 decisions, DBRO, KCCO and WAGE-A.

ISSUES:

Whether the claimant was able to work and available for work during the week that ended December 31, 2022.

Whether the claimant was required to make an active and earnest search for new employment and meet the reemployment activities requirement during the week that ended December 31, 2022.

If the claimant was subject to the work search and reemployment activities requirements during the week that ended December 31, 2022, did the claimant meet those requirements?

FINDINGS OF FACT:

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

Austin Henkel (claimant) is employed by Brennan Construction Company (employer account number 040589) as a full-time construction laborer and last performed work for the employer on November 2, 2022. The employer's business engages in bridge building on public roads and highways. In other words, the employer's business, and the claimant's employment, falls under the heading of highway maintenance. The employer laid off the claimant effective November 2, 2022, due to the colder weather not being conducive to begin work on another bridge. Bridge

projects can take two or three months, or several months, to complete, depending on the size of the bridge. At the time the employer laid off the claimant, the parties had a mutual understanding that the employer would recall the claimant to the employment when the weather was again conducive to bridge building. As of the February 1, 2023 appeal hearing, the employer had not yet recalled the claimant to the employment.

The claimant established an original claim for benefits that was effective November 13, 2022. Since the claimant established the November 13, 2022 original claim, he had made consecutive weekly claims, including a claim for the week that ended December 31, 2022. The week was the seventh week of the claim. The claimant has consistently reported in his weekly claims that he is able to work, available for work, has not refused work, and has earned no wages. Since the claimant established the November 13, 2022 original claim, he has not looked for new employment and has instead remained ready, willing, able and available for work with Brennan Construction.

On December 29, 2022, Iowa Workforce Development issued a reference 01 decision that stated the claimant was required to seek work and keep a record of his employment activities for each week after the December 29, 2022 decision date. The reference 01 decision did not explicitly state the claimant was not deemed temporarily unemployed, but implied as much. The December 29, 2022 (reference 01) decision has been reversed in Appeal Number 23A-UI-00401-JT-T.

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) and (28) 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.

Because the administrative law judge reversed the reference 01 decision and concluded in Appeal Number 23A-UI-00401-JT-T that the claimant was on a short-term layoff from highway maintenance employment and not subject to the work search or reemployment activities requirements during the short-term layoff, the work search warning for the week ending December 31, 2022 is unwarranted and is REVERSED.

Even if the reference 01 decision had not been reversed in Appeal Number 23A-UI-00401-JT-T, the work search warning regarding the week ending December 31, 2022 was unreasonable and unwarranted. Given the December 29, 2022 mailing date of the reference 01 decision, the claimant would have had no reasonable opportunity to receive and comply with that decision during the benefit week that ended just two days later on December 31, 2022.

DECISION:

The January 4, 2023 (reference 02) work search warning decision is REVERSED. During the week that ended December 31, 2022, the claimant was on a short-term from his full-time highway maintenance employment with Brennan Construction Company, was able to work and available for work with that employer, and was exempt from the work search/reemployment activities requirements.

A handwritten signature in black ink that reads "James E. Timberland". The signature is written in a cursive style and is positioned above a horizontal line.

James E. Timberland
Administrative Law Judge

February 3, 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.