

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

SOMSANITH D BANUVONG
Claimant

**APPEAL 23A-UI-00900-SN
ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 10/30/22
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant, Somsanith D. Banuvong, filed an appeal from the January 24, 2023, (reference 04) unemployment insurance decision that denied benefits for the week ending December 24, 2022 based upon the conclusion he did not perform work searches despite being warned. The parties were properly notified of the hearing. An in-person hearing was held on February 24, 2023 at 11:05 a.m. at the IowaWorks center at 2508 E 14th Street in Sioux City, Iowa 51101-2298. The claimant participated. The appeal was heard jointly with 23A-UI-00899-SN and 23A-UI-00901-SN. Official notice was taken of the agency records. Exhibits A, B, C, D, and E were received into the record.

ISSUES:

Whether the claimant was able and available for work for the week ending December 31, 2022?

FINDINGS OF FACT:

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

The claimant still resides at his address of record in Sioux City, Iowa. Sioux City, Iowa is one of the state's larger metropolitan areas.

The claimant has worked in a seasonal capacity for Natural Beauty Growers LLC for several years. He performs agricultural work for this employer typically between February and August each year.

The administrative record NMRO shows the claimant received a work search warning for the week ending April 27, 2021.

In 2022, the claimant was laid off for the season on September 28, 2022. The claimant remained on that layoff until February 20, 2022.

The claimant provided a copy of a work search log displaying work searches he performed during the layoff. The claimant made four applications over that period on December 29, 2022, December 30, 2022, and January 4, 2023. (Exhibit A) The claimant said that he did not make

any more applications than this because he said there were not enough jobs in his area. The claimant did not perform any Iowa Workforce Development Department workshops during this period. Two applications the claimant made were for packing positions at two cheese factories. The claimant expressed unfamiliarity with performing this work in the past. He also expressed uncertainty about his ability to perform lifting jobs consistent with this work, although the advertisements he responded to did not give this information. The claimant also said one of these jobs would require him to travel forty-five miles each way, which was unsatisfactory. The third job was in an industrial setting. The final position he applied to was for a mail sorting position. This position was filled by the time he applied.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that the claimant was not able to work and available for work for the week ending December 31, 2022?

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".

b. Notwithstanding any provision of this chapter to the contrary, the department may establish by rule a process to waive or alter the work search requirements of this subsection for a claim for benefits if an individual has a reasonable expectation that the individual will be returning to employment and is attached to a regular job or industry or a member in good standing of a union therein eligible for referral for employment. To be considered attached to a regular job or industry, an individual must be on a short-term temporary layoff. If work is not available at the conclusion of the layoff period due to short-term circumstances beyond the employer's control, the employer may request an extension of the waiver or alteration for up to two weeks from the department. For purposes of this paragraph, "short-term temporary layoff" means a layoff period of sixteen weeks or less due to **seasonal weather conditions that impact the ability to perform work related to highway construction, repair, or maintenance with a specific return-to-work date verified by the employer.**

Iowa Code section 96.1A(37) provides:

Totally unemployed", "partially unemployed", and "temporarily unemployed.

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed "partially unemployed" in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed "temporarily unemployed" if for a period, verified by the department, **not to exceed four consecutive weeks**, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

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.

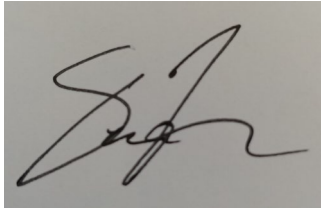
(28) A claimant will be ineligible for benefits because of failure to make an adequate work search after having been previously warned and instructed to expand the search for work effort.

The general rule as expressed in Iowa Code section 96.4(3)a states an individual must be searching for work to continue being eligible for benefits. This provision is waived or ignored if a claimant meets certain circumstances expressed in Iowa Code section 96.4(3)a and Iowa Code section 96.1A(37). The claimant had been on a seasonal layoff for more than four consecutive weeks for the week ending December 24, 2022. The claimant's work is not related to highway maintenance or repair, so he can only benefit from the temporarily unemployed waiver language in Iowa Code section 96.1A(37). Since the week in question falls beyond four consecutive weeks, Iowa Code section 96.1A(37) does not apply and the claimant must perform work searches.

The work search log the claimant provided (Exhibit A) shows he performed no work searches for the week ending December 24, 2022. The claimant was previously warned to perform work searches on April 27, 2021. Therefore, the claimant is denied benefits for the week ending December 24, 2022 under Iowa Admin. Code r. 871-24.23(28).

DECISION:

The January 24, 2023, (reference 04) unemployment insurance decision is AFFIRMED. The claimant was not able to work and available for work for the week ending December 24, 2022. Benefits are denied.

A rectangular box containing a handwritten signature in black ink. The signature is stylized and appears to read 'Sean M. Nelson'.

Sean M. Nelson
Administrative Law Judge II
Iowa Department of Inspections & Appeals
Administrative Hearings Division – UI Appeals Bureau

February 28, 2023
Decision Dated and Mailed

smn/scn

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> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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 se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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.