

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JOHN LEWIS**  
Claimant

**ABM ONSITE SERVICES MIDWEST INC**  
Employer

**APPEAL 17A-UI-05030-DB-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 04/16/17**  
**Claimant: Appellant (5)**

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Iowa Code § 96.4(3) – Able and Available  
Iowa Admin. Code r. 871-24.22(3) – Work Search Requirements

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the May 2, 2017 (reference 03) unemployment insurance decision that found claimant was ineligible for unemployment benefits because he was not able to perform work at that time due to illness. The parties were properly notified of the hearing. A telephone hearing was held on May 31, 2017. The claimant, John Lewis, participated personally and was represented by Attorney Samuel J. Aden. The employer, ABM Onsite Services Midwest Inc., was represented by Attorney Katrina Raisch and participated through witnesses Brooke Hupke, Christine Wetzler, and Jackie Sciorrotta. Claimant's Exhibit 1 was admitted. Employer's Exhibits A – F were admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits file including the fact-finding documents.

**ISSUES:**

Is the claimant able to work, available for work, and actively and earnestly seeking work effective April 16, 2017?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed from June 26, 2014 until March 1, 2017. Claimant was employed as a utility man. His job duties included stocking supplies and scrubbing floors. Brooke Hupke was his immediate supervisor. Claimant's working hours were 7:30 a.m. to 4:00 p.m. Monday through Friday each week.

On or about December 20, 2016 claimant suffered a work-related injury. He eventually had surgery on January 3, 2017. He was instructed by his treating physician to refrain from working until February 15, 2017. When he returned to work, he was given working restrictions from his physician. Those work restrictions included light duty work only and no lifting more than 10-15 pounds. These working restrictions were in place until March 1, 2017.

The employer has a written attendance policy. See Exhibit D. Claimant agreed to adhere to the attendance policy. See Exhibit D. The policy required that he must call his supervisor at least four hours prior to his scheduled shift start time if he was unable to report to work. See Exhibit D. Employer's work rules state that excessive tardiness or absenteeism is cause for termination. See Exhibit F. On December 23, 2016 claimant signed a document entitled "Employee's Responsibilities for Work Related Injuries/Illness". See Exhibit B. This document states: "It is YOUR responsibility to keep in contact with your supervisor." See Exhibit B. Claimant also signed and acknowledged that he understood the employer's work rules. See Exhibit F. The work rules state that some situations may not be subject to progressive disciplinary steps and that under certain circumstances, an action may be serious enough to constitute misconduct, resulting in immediate termination. See Exhibit F. The work rules go on to state that failure to report that you will be absent is cause for termination. See Exhibit F.

Claimant's last day physically worked on the job was February 17, 2017. He was scheduled to work on February 20, 2017 but was absent from work the entire day. Claimant did call and report his absence on February 20, 2017 at 7:26 a.m. and he was unable to work on this date due to illness. See Exhibit C.

Claimant was scheduled to work on February 21, 2017 but he did not work due to illness. He reported his absence to his supervisor at 4:58 a.m. on February 21, 2017. See Exhibit C.

Claimant was scheduled to work on February 22, 2017 but he did not work due to illness. Claimant spoke to Ms. Hupke at approximately 7:34 a.m. on this date to report his absence from work. See Exhibit C.

Claimant was scheduled to work on February 23, 2017 but he did not work due to illness. Claimant telephoned Ms. Hupke to report his absence from work due to illness at 7:04 a.m.

Claimant was absent from work on February 24, 2017 due to illness and did not report his absence from work on this date. Claimant was absent from work on February 27, 2017 due to illness and did not report his absence on this date. Claimant was absent from work on February 28, 2017 due to illness and did not report his absence from work on this date. Claimant was absent from work on March 1, 2017 due to illness and did not report his absence from work on this date. Claimant was discharged from work on March 1, 2017 due to absenteeism and failure to notify his employer of his absences.

As of March 2, 2017, claimant's work-related injury symptoms subsided and he was able to work. Claimant has been able to work since March 2, 2017 without any work restrictions. Claimant has been available for work since March 2, 2017. According to claimant's own testimony, he has not made any job searches and has not been earnestly and actively seeking work for each week since filing his claim for benefits on April 16, 2017.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes as follows:

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23(27) 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.

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.

*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:

(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.

This rule is intended to implement Iowa Code section 96.4(3).

Claimant has not been earnestly and actively seeking work since filing his original claim for benefits on April 16, 2017 and until the date of hearing, May 31, 2017. Because claimant has failed to earnestly and actively seek work, benefits are denied.

**DECISION:**

The May 2, 2017 (reference 03) decision is modified with no change in effect. Claimant has failed to make an active and earnest search for work for the six-week period beginning April 16, 2017 and ending May 27, 2017. Benefits are denied for that period for his failure to actively search for work.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/scn