

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARKUS P WOGEN
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 24A-UI-02440-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/26/23
Claimant: Appellant (2R)**

Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

Markus P. Wogen, the claimant/appellant,¹ appealed the Iowa Workforce Development (IWD) February 19, 2024, (reference 04) unemployment insurance (UI) decision. IWD denied Mr. Wogen REGULAR (state) UI benefits for the week of January 14-20, 2024 because IWD concluded he was not ready, willing and able to work this week. On March 8, 2024, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to Mr. Wogen for a telephone hearing scheduled for March 27, 2024.

The administrative law judge held a telephone hearing on March 27, 2024. Mr. Wogen participated in the hearing personally. The administrative law judge took official notice of the administrative record.

ISSUE:

Is Mr. Wogen able to and available for work the week of January 14-20, 2024?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Wogen applied for UI benefits effective November 26, 2023. In relevant part, Mr. Wogen filed a weekly claim for the week of January 14-20, 2024. Mr. Wogen mistakenly answered “No” to the question about him being ready, willing, and able to work. Mr. Wogen was ready, willing, and able to work, and nothing was stopping him from work that week.

On March 12, 2024, IWD issued a reference 06 UI decision. In this decision, IWD concluded that IWD overpaid Mr. Wogen REGULAR (state) UI benefits in the total gross amount of \$582.00 for the week of January 14-20, 2024 because the reference 04 UI decision denies Mr. Wogen UI benefits for this week.

¹ Claimant is the person who filed for UI benefits. Appellant is the person or employer who filed the appeal.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Wogen is able to and available for work the week of January 14-20, 2024, so he is eligible for UI benefits for this week.

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".

A person claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work.² To be able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood."³ "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides."⁴

In this case, Mr. Wogen made a mistake. He answered "No" instead of "Yes" when asked about his readiness, willingness, and ability to work for the week of January 14-20. Mr. Wogen has established that he is able to and available for work this week. Mr. Wogen is eligible for UI benefits for the week of January 14-20, 2024, as long as no other decision denies him UI benefits.

Since Mr. Wogen is eligible for UI benefits for the week of January 14-20, 2024, the issue of whether IWD overpaid Mr. Wogen UI benefits for this week should be remanded (sent back) to the IWD Benefits Bureau for investigation and a decision.

² Iowa Admin. Code r. 871-24.22.

³ *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1).

⁴ *Sierra* at 723.

DECISION:

The February 19, 2024 (reference 04) UI decision REVERSED. Mr. Wogen is able to and available for work the week of January 14-20, 2024. Mr. Wogen is eligible for UI benefits for the week of January 14-20, 2024, as long as no other decision denies her UI benefits.

REMAND:

The issue of whether IWD overpaid Mr. Wogen UI benefits for the week of January 14-20, given that decision finds him eligible for UI benefits for this week, is REMANDED (sent back) to the IWD Benefits Bureau for investigation, a decision, and/or any other necessary action.



Daniel Zeno
Administrative Law Judge

March 28, 2024
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with this 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
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
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
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
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 adquiera 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.