

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

JESSIE L HAMILTON
Claimant

APPEAL 24A-UI-01338-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 12/17/23
Claimant: Appellant (3-R)**

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

STATEMENT OF THE CASE:

The claimant/appellant, Jessie L. Hamilton, filed an appeal from the February 2, 2024 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision which issued a work search warning for the week ending January 27, 2024. It did not deny benefits. The parties were properly notified of the hearing. A telephone hearing was held on February 26, 2024, at 3:00 p.m. This hearing was held with 24A-UI-01337-SN-T. Exhibit 1 was received into the record. Official notice was taken of the administrative records.

ISSUE:

Did the claimant make an adequate work search for the week ending January 27, 2024, and was the warning appropriate?

FINDINGS OF FACT:

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

The claimant was seasonally laid off from his employer, City of Bettendorf, on November 17, 2023. The claimant has worked as the groundskeeper for its golf course, Palmer Golf Course, for most of his career. None of his duties relate to road or highway maintenance. The fifth week after this layoff was the week ending December 23, 2023.

The claimant typically returns in the second week of April each year.

The claimant made no attempt to look for work. He reasoned this would be pointless because he cannot read or write. He also reasoned he would be working for the City of Bettendorf nearly five months later in the middle of April.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that the claimant has made an active and earnest search for work for the week ending January 27, 2024. Benefits are denied for the week ending January 27, 2024, because he did not make any effort to look for work.

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"**. [Emphasis added]

Iowa Code section 96.4(3)b provides:

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 Admin. Code r. 871-24.22 provides, in relevant part:

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.

(1) Able to work. An 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.

...

(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.

...

(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.

Iowa Admin. Code r. 871-24.23(27) and (28) provide:

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. [Emphasis added]

The claimant made no effort to look for work for the week ending January 27, 2024. Such a finding under Iowa Admin. Code r. 871-24.23(27) “will make a claimant ineligible for benefits during the period.” It then emphasizes, “It is essential that such claimant must actively and earnestly seek work.” As observed with the analysis above, this rule is written within the greater context of exemptions displayed above. But when no exemptions apply, and no work search effort is made, then no benefits are paid. *Contrast* with Iowa Admin. Code r. 871-24.23(28) (stating “failure to make an adequate work search” will merely result in a warning instructing a claimant to expand their work search.”) Others may see Iowa Admin. Code r. 871-24.23(28) as always issuing a warning first. If this was the intent, then it would be an extremely confusing way to write the rules to reach that conclusion. Such a view stands in direct contradiction of the plain meaning of Iowa Admin. Code r. 871-24.23(27). In order for the two sections to be read to their full meaning, the words “any effort” must be distinguished from merely making an inadequate search. Iowa Admin. Code r. 871-24.23 (28) also provides the context that failure to make an adequate search may be based on an imprecise view of the sufficiency of the existing search.

In *Brumley v. Iowa Dept. of Job Service*, 292 NW2d 126, (1980) the Iowa Supreme Court appears to find a work search warning is required, but this regards an old administrative rule without the corresponding disqualification expressed in Iowa Admin. Code r. 871-24.23(27). *Brumley* also made some attempts in her work search, so to the extent the Iowa Supreme Court’s decision can be read to apply to a new administrative rule, it is limited to the facts upon which it had to make the holding.

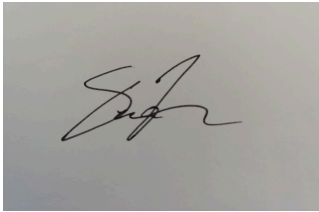
Such a rationale cannot be extended to this scenario because the claimant made no efforts to search and considered it unnecessary. Therefore, the claimant should be disqualified from benefits rather than merely getting a warning for the week ending January 27, 2024. Benefits are denied for the week ending January 27, 2024.

DECISION:

The February 2, 2024 (reference 02) unemployment insurance decision is MODIFIED IN FAVOR OF THE RESPONDENT. The claimant is ineligible for benefits for the week ending January 27, 2024, because he made no effort to search for work and none of the work search exemptions apply.

REMAND:

The administrative law judge is remanding to the Integrity Bureau the issue regarding whether the claimant is overpaid benefits for the week ending January 27, 2024, consistent with this decision.

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

Sean M. Nelson
Administrative Law Judge II

February 28, 2024
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
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
Online: 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