

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

ARNULFO ORTEGA
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 24A-UI-01639-ED

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/24/23
Claimant: Appellant (1)

Iowa Code § 96.1A(37) – Partially, Temporarily, Totally Unemployed
Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.22(3) – Work Search

STATEMENT OF THE CASE:

Claimant, Arnulfo Ortega, filed an appeal from the February 6, 2024 (reference 01) unemployment insurance decision that claimant was required to participate in reemployment activities. The parties were properly notified of the hearing. An in-person hearing was held in Des Moines, Iowa on March 7, 2024. Claimant, Arnulfo Ortega, participated personally. Claimant's Exhibit A was admitted into evidence. Official notice was taken of the administrative record.

ISSUES:

Whether the claimant was required to participate in re-employment activities.
Whether the claimant was partially, temporarily or permanently unemployed.

FINDINGS OF FACT:

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

Claimant established an original claim for benefits that was effective December 24, 2023. Claimant has made weekly claims for each week since he established the claim and has received benefits for those weeks.

Claimant's base period wage credits derive from seasonal employment as a full-time laborer for Timber Pine Nursery and Greenhouse. Timber Pine Nursery and Greenhouse is a landscaping company that provides irrigation services. The claimant has worked for Timber Pine Nursery and Greenhouse for 10 years. Each year the claimant is laid off during the cold months and is called back to work in the Spring. The claimant was laid off on December 1, 2023 and returned to work on March 4, 2024. He works on a full-time basis.

On February 6, 2024, Iowa Workforce Development mailed the decision to the claimant directing the claimant to search for work and keep a record of his re-employment activities. The decision

directed the claimant to actively seek work and to complete at least four (4) re-employment activities each week, including at least three applications for employment. The decision directed the claimant to keep a complete record of his employment activities and to provide a record upon request. The decision stated that it applied to each benefit week claimed after the date of December 21, 2023 decision.

IWD maintains a list of trades and occupations that are exempt from the work search requirement. Claimant's trade/occupation is not included on this list of trades and occupations that are exempt from making employment contacts for the duration of the claim year.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4(3) states:

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. 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 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(2) 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.

(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 ust 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 Code § 96.1A(37) provides in relevant part: "Total and partial unemployment".

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.

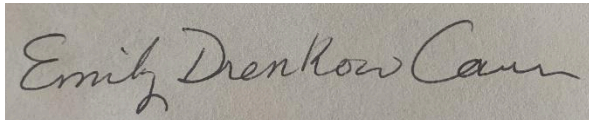
(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

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 plan shutdown, vacation, inventory of 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.

At the time IWD mailed the February 6, 2024 decision to the claimant, he was in his sixth week of being laid off and could no longer be deemed temporarily unemployed within the meaning of the law. The claimant had by that time been separated from the employer for more than four weeks. With entry of the February 6, 2024 decision, the claimant became subject to the requirement that he actively and earnestly seek new employment and otherwise comply with the reemployment activities requirements as part of the able and available requirements.

DECISION:

The February 6, 2024 (reference 01) unemployment insurance decision is affirmed. As of February 6, 2024, the claimant was no longer temporarily unemployed within the meaning of the law and was required to actively and earnestly seek new employment and to otherwise comply with the reemployment activities requirement as part of the able and available requirements.

A rectangular box containing a handwritten signature in cursive script that reads "Emily Drenkow Carr".

Emily Drenkow Carr
Administrative Law Judge

March 12, 2024
Decision Dated and Mailed

ED/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
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.