

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WILLIS L HUMPHREY
Claimant

IOWAWORKS

APPEAL 20A-UI-00113-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/13/19
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Available for work
Iowa Code § 96.4(7) – Reemployment services
Iowa Admin. Code r. 871-24.6 – Profiling for reemployment services
Iowa Admin. Code r. 871-24.2(1)e – Procedures for workers desiring to file a claim for benefits
Iowa Admin. Code r. 871-24.23 (11) – Failure to Report

STATEMENT OF THE CASE:

On December 27, 2019, the claimant/appellant filed an appeal from the December 19, 2019 (reference 03) unemployment insurance decision that found claimant eligible for benefits effective December 8, 2020. The parties were properly notified of the hearing. A telephone hearing was held on January 27, 2020. The claimant participated personally. Linda Burkhart participated on behalf of Iowa Workforce Development (“IWD”). IWD Exhibits 2 and 3 were admitted into the record. Department’s Exhibit D-1 was also received.

ISSUES:

Is the claimant available for the two weeks ending December 7, 2019?
Did the claimant fail to report as directed by a department representative to participate in a reemployment services appointment or offer justifiable cause for their failure to do so?

FINDINGS OF FACT:

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

The claimant filed a claim for unemployment insurance benefits with an effective date of October 13, 2019. He filed for three weeks of unemployment benefits before he gained other employment.

Claimant was selected to participate in a reemployment services appointment on November 27, 2019, at 9:00 a.m. Claimant had not previously participated in this appointment during this claim year. On November 18, 2019, Iowa Workforce Development sent claimant a letter notifying him of this appointment and that if he did not attend, his benefits could be denied. The letter also gave claimant a telephone number to contact if he could not attend the appointment.

The letter was not returned in the mail to Iowa Workforce Development. However, claimant did not always read his mail and was not especially worried about it because he regained employment. Although claimant received the letter, he did not open the mail and review it.

Therefore, he did not notify Iowa Workforce Development he would not be attending the appointment. Claimant did not appear for the November 27, 2019, appointment.

Claimant was separated from his new employment and filed an additional claim with an effective date of November 24, 2019. Claimant began filing weekly claims, but did not receive any benefits as his claim was locked when he missed his appointment.

On December 2, 2019, Iowa Workforce Development sent claimant a reference 01 unemployment insurance decision that denied benefits effective November 24, 2019, due to the missed appointment. The decision warned an appeal was due by December 12, 2019. Claimant received the decision, but did not review the mail and did not file an appeal.

By December 13, 2019, claimant was wondering why he still had not received any benefits. Claimant contacted Iowa Workforce Development and learned that his claim was locked due to his missed appointment.

On December 18, 2019, claimant spoke with IWD employee Linda Burkhart on the phone and told her that he did not know if he got the letter notifying him of the appointment and that if he did, he did not read it because he had been working and did not open the letter. The appointment was rescheduled and IWD unlocked the claim effective December 14, 2019. Claimant was unhappy with this and then spoke with supervisor Elizabeth Waigand.

On December 18, 2019, Waigand sent claimant an email advising him to appeal the decision to an administrative law judge and gave him the link by which to do so.

On December 27, 2019, claimant filed an appeal.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant did not provide justifiable cause for the failure to report as directed to participate in a reemployment services appointment.

Iowa Code § 96.4(7) provides:

Required findings.

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

(7) The individual participates in reemployment services as directed by the department pursuant to a profiling system, established by the department, which identifies individuals who are likely to exhaust benefits and be in need of reemployment services.

Iowa Admin. Code r. 871-24.6 provides:

Reemployment services and eligibility assessment procedure.

(1) The department of workforce development will provide a program which consists of profiling claimants and providing reemployment services.

(2) Purpose.

a. Profiling is a systematic procedure used to identify claimants who, because of certain characteristics, are determined to be permanently separated and most

likely to exhaust benefits. Such claimants may be referred to reemployment services.

b. The eligibility assessment program is used to accelerate the individual's return to work and systematically review the individual's efforts towards the same goal.

(3) Reemployment services and eligibility assessment may include, but are not limited to, the following:

- a. An assessment of the claimant's aptitude, work history, and interest.
- b. Employment counseling regarding reemployment approaches and plans.
- c. Job search assistance and job placement services.
- d. Labor market information.
- e. Job search workshops or job clubs and referrals to employers.
- f. Résumé preparation.
- g. Other similar services.

(4) As part of the initial intake procedure, each claimant shall be required to provide the information necessary for profiling and evaluation of the likelihood of needing reemployment assistance.

(5) The referral of a claimant and the provision of reemployment services is subject to the availability of funding and limitations of the size of the classes.

(6) A claimant shall participate in reemployment services when referred by the department unless the claimant establishes justifiable cause for failure to participate or the claimant has previously completed such training or services. Failure by the claimant to participate without justifiable cause shall disqualify the claimant from the receipt of benefits until the claimant participates in the reemployment services or eligibility assessment. **The claimant shall contact the agency prior to the scheduled appointment or service to advise the department of the justifiable cause.**

a. Justifiable cause for failure to participate is an important and significant reason which a reasonable person would consider adequate justification in view of the paramount importance of reemployment to the claimant. Justifiable cause includes when the claimant is scheduled for an employment interview, is verified return to work, or both prior to the scheduled appointment or service.

(7) Eligibility assessment procedure.

- a. Before an individual has claimed five weeks of intrastate benefits, the workforce development center shall receive a computer-selected list of individuals claiming benefits within the target population for review.
- b. No eligibility assessment will be performed on an individual unless monetary eligibility and nonmonetary eligibility are established.
- c. Once selected for an initial or subsequent eligibility assessment, claimants are required to participate in all components of the assessment as determined by the department.
- d. A Notice to Report shall be sent by the workforce development center to an individual who is in an active status at the time of its printing. If the individual does not respond, the department must issue an appropriate failure to report decision and lock the claim to prevent payment.
- e. Selected claimants must report in person to the designated workforce development center to receive staff-assisted services for the initial assessment.

f. Before an administrative law judge can rule on a disqualification for failure to report at an Iowa workforce development center as directed, there must be evidence to show that the individual was required to report for an interview.

(8) Conducting the first eligibility assessment interview.

- a. All available evidence must be examined to detect potentially disqualifying issues.
- b. The individual's need for advice, assistance or instructions must be determined and conveyed to the individual.
- c. The interview must convey to the individual the requirements that must be satisfied to maintain eligibility.
- d. This advice, assistance or instruction constitutes an understanding and agreement between the individual and the unemployment insurance representative at the conclusion of the interview regarding the individual's willingness and ability to eliminate any barriers to obtaining reemployment which otherwise would result in referral for adjudication.
- e. The individual shall be advised of what constitutes an acceptable effort to obtain reemployment in accordance with state policy, with consideration for local labor market information and the individual's occupation.
- f. The final objective of the interview is to determine whether a subsequent interview is needed. This determination shall be based on expected return to work date, job openings in the area, local labor market conditions, and other.

This rule is intended to implement Iowa Code section 96.4(7).

(emphasis added).

Iowa Admin. Code r. 871-24.2(1)e provides:

Procedures for workers desiring to file a claim for benefits for unemployment insurance.

(1) Section 96.6 of the employment security law of Iowa states that claims for benefits shall be made in accordance with such rules as the department prescribes. The department of workforce development accordingly prescribes:

e. In order to maintain continuing eligibility for benefits during any continuous period of unemployment, an individual shall report as directed to do so by an authorized representative of the department. If the individual has moved to another locality, the individual may register and report in person at a workforce development center at the time previously specified for the reporting.

(1) An individual who files a weekly continued claim will have the benefit payment automatically deposited weekly on a debit card specified by the department.

(2) The department retains the ultimate authority to choose the method of reporting and payment.

Each week a claimant files a claim for benefits he must be able to and available for work. Iowa Code § 96.4(3). To maintain continued eligibility, a claimant shall report as directed by an authorized representative. 871 IAC 24.2(1)e. A claimant who fails to report as directed by notice mailed to the claimant is deemed unavailable for work. Iowa Admin. Code r. 24.23(11).

If the department identifies a claimant who is likely to exhaust benefits, in order to be eligible for weekly benefits a claimant must report as directed to participate in reemployment services. Iowa Code § 96.4(7). Unemployment insurance rules require a claimant to participate in reemployment services when referred by the department unless the claimant establishes justifiable cause for failure to participate or the claimant has previously completed such training or services. Iowa Admin. Code r. 871-24.6(6). Failure by the claimant to participate without justifiable cause shall disqualify the claimant from the receipt of benefits until the claimant participates in the reemployment services. *Id.* Justifiable cause for failure to participate includes an important and significant reason which a reasonable person would consider adequate justification in view of the paramount importance of reemployment to the claimant. Justifiable cause includes when the claimant is scheduled for an employment interview, is verified return to work, or both prior to the scheduled appointment or service. *Id.* The claimant shall contact the agency prior to the scheduled appointment or service to advise the department of the justifiable cause. *Id.* Failure to report for the appointment, failure to contact the agency prior to the scheduled appointment or service to advise the department of the justifiable cause for missing the appointment, or failure to have justifiable cause for failing to report for the appointment means the claimant has failed to meet the availability requirements of the law. *Id.*

Despite claimant's denial of receipt of notice during the hearing, the administrative law judge finds claimant's earlier statements to Burkhart to be more credible. Claimant was not checking his mail. The notice was not returned to IWD by the postal service. Claimant received the notice, but chose not to open and read it. Therefore, claimant did not report as directed or notify the agency he was reemployed and would miss the appointment. Claimant failed to present justifiable cause for his failure to report as directed for a reemployment services appointment. Therefore, benefits are denied during the two weeks ending December 7, 2019.

DECISION:

The December 19, 2019 (reference 03) unemployment insurance decision is affirmed. Claimant has not provided justifiable cause for having failed to report for a reemployment services appointment. Benefits are denied for the two weeks ending December 7, 2019.



Christine A. Louis
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January 31, 2020
Decision Dated and Mailed

cal/scn