

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NHA T NGUYEN
Claimant

APPEAL 18A-UI-08652-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 05/13/18
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
Iowa Admin. Code r. 871-24.11 – Eligibility review program

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the August 8, 2018, (reference 04) unemployment insurance decision that found claimant was not eligible for unemployment benefits because claimant failed to participate in reemployment services. The parties were properly notified of the hearing. A telephone hearing was held on September 5, 2018. The claimant, Nha T. Nguyen, participated personally. Kristina Hughes, Workforce Advisor participated on behalf of Iowa Workforce Development. Department Exhibit 1 was admitted into the record.

ISSUES:

Is the claimant available for work effective July 22, 2018?
Did the claimant fail to participate in a reemployment services class as directed or offer justifiable cause for her 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 May 13, 2018. Claimant was selected to participate in the reemployment services program. A notice was mailed to the claimant on June 12, 2018, which stated the claimant was to report for a reemployment and eligibility assessment appointment on July 5, 2018. The claimant did not report for the appointment on July 5. The claimant did not contact Ms. Hughes prior to the July 5 appointment to indicate she could not attend. Claimant contacted Ms. Hughes on July 16 to reschedule her appointment. Ms. Hughes rescheduled her appointment for July 19 and her claim was unlocked.

The claimant attended the July 19 appointment with Ms. Hughes. At that meeting, the claimant was given a clear instruction by Ms. Hughes that she was scheduled to attend the National Career Readiness (NCRC) assessment on July 27 at 9:00 a.m. and that she was to attend the orientation to services program at 1:30 p.m. also on July 27. Claimant was given a separate sheet of paper showing her NCRC appointment time and location and showing her orientation to center services appointment time and location.

In addition, the claimant was given a separate sheet of paper that was titled as a re-employment services and employment assessment (RESEA) agreement. Claimant signed the agreement on July 19. (Department's Exhibit 1)

That agreement specifically warns claimant's that their failure to complete the requirements will result in the denial of unemployment insurance benefits. The agreement is highlighted and bolded in key paragraphs to put claimants on notice about what will happen if they do not comply with the agreement. It provides in part:

"I understand that, if I do not complete scheduled RESEA activities within the agreed upon timeframe, it will result in the denial of unemployment insurance benefits."

If there are circumstances that prevent you from attending and completing the above listed activities, please contact the advisor listed below at the phone number provided to discuss your options.

You must do so prior to the due dates of your scheduled activities.

Please arrive 10 minutes prior to the start time of scheduled activities with photo ID and please turn off your cell phone."

(Department Exhibit 1, emphasis in the original)

The NCRC is a proctored, timed test where every tester must begin at the same time. Claimants who are more than five minutes late to the test are not allowed to participate and must reschedule so as not to negatively impact all of the other test takers.

On July 27, the claimant arrived at the testing location at either 9:08 a.m. or 9:12 a.m. (Note her instructions set out above required her to arrive ten minutes before the scheduled start time of 9:00 a.m.) The claimant was late because of heavy traffic. Prior to being late she did not call the location or notify them that she was going to be late.

When the claimant arrived she was told by the front desk person she was too late to begin the test. She requested to see a manager. Jamie Norton, a manager at the location, met with claimant and discussed the situation. In an e-mail to Ms. Hughes dated July 27, 2018 at 9:43 a.m. Mr. Norton detailed his discussion with the claimant:

"The client said she didn't even know why she was scheduled so I asked Joy to find out who her worker was. Inger spoke to the customer and explained the testing policy. The client wanted to speak to a manager again. I attempted to get her information so I could pass it along to you so you could reschedule her testing. She said if she couldn't test today, she did not want to reschedule. I explained that if she didn't reschedule to take the test, her benefits could be locked. I asked her again if she wanted to reschedule and she said "no" because she had planned to be here all day today and didn't want to drive out here again." (Department Exhibit 1)

Mr. Norton's e-mail was written less than one-half hour after his conversation with the claimant. His notes are credible and believable. As a manager, he was offering to solve the claimant's problem by having her NCRC appointment rescheduled. Nowhere in his e-mail does he tell Ms. Hughes to call the claimant to reschedule her NCRC appointment. Nowhere in his e-mail does he tell Ms. Hughes that he promised the claimant that Ms. Hughes would call claimant to reschedule her appointment. Mr. Norton had Inger Hall, another workforce advisor who handles RESEA meet with the claimant on July 27 as Ms. Hughes was working in the Creston, Iowa office that day. Claimant was given ample opportunity to reschedule but simply chose not to do so. The agency was not obligated to contact the claimant to ask her to reschedule again as the claimant had been told by Ms. Hughes, Ms. Hall, Mr. Norton and per her agreement dated July 19 that it was her obligation to attend the required classes or face loss of benefits.

Claimant could have attended the 1:30 p.m. orientation to services appointment but she simply chose not to do so.

Mr. Hughes graciously called the claimant the following week and left her two voice mail messages, neither of which the claimant returned. To date of hearing, the claimant still has not contacted the agency to reschedule her appointment to attend the required NCRC or the orientation to services class.

REASONING AND CONCLUSIONS OF LAW:

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

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".

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:

Profiling for reemployment services.

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

(2) 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 toward the same goal.

(3) Reemployment services 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 to return to work, or both prior to the scheduled appointment or service.

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

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.

Iowa Admin. Code r. 871-24.23(11) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(11) Failure to report as directed to workforce development in response to the notice which was mailed to the claimant will result in the claimant being deemed not to meet the availability requirements.

Iowa Admin. Code r. 871-24.6(7) provides in pertinent part:

Eligibility assessment procedure.

a. Before an individual has claimed five weeks of interstate 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 none monetary 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 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.

Iowa Admin. Code r. 871-24.6(8) provides:

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 relevant factors.

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. Iowa Admin. Code r. 871-24.6(6). Justifiable cause for failure to participate is defined as "an important and significant reason which a reasonable person would consider adequate justification in view of the paramount importance of reemployment to the claimant." Iowa Admin. Code r. 871-24.6(6). The claimant shall contact the agency prior to the scheduled appointment or service to advise the department of the justifiable cause. Iowa Admin. Code r. 871-24.6(6). Failure to report or have justifiable cause for failing to report means the claimant has failed to meet the availability requirements of the law. Iowa Admin. Code r. 871-24.2(1)e and 871-24.23(11).

The claimant knew she was to attend NCRC on July 27 at 9:00 a.m. and had been given notice to arrive at least ten minutes prior to the class start time. Claimant was late due to traffic. Being late due to heavy traffic is not a justifiable cause for missing the required classes. Claimant simply chose not to attend the 1:30 p.m. class. Heavy traffic is not considered justifiable cause for the claimant's failure to participate in reemployment services.

Mr. Norton's e-mail is persuasive as it was written immediately after his conversation with claimant. As a manager, Mr. Norton had the authority to reschedule the claimant at that time. The claimant simply refused his repeated offer to reschedule. Under these circumstances the agency is not obligated to call claimant to ask her to reschedule. Claimant has been made aware by numerous people that she must complete the re-employment services requirements but has chosen not to complete them. As of the date of the hearing, the claimant still has not participated in reemployment services as required. The claimant is not eligible to receive unemployment insurance benefits effective July 22, 2018, as she has not completed the required re-employment services. Benefits are denied.

DECISION:

The August 8, 2018, (reference 04) unemployment insurance decision is affirmed. The claimant has failed to report for a reemployment services class as directed. Benefits are denied effective July 22, 2018.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs