

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LORETO J GONZALEZ HERRERA
Claimant

APPEAL 17A-UI-11392-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 09/24/17
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 November 1, 2017, (reference 02) 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 November 28, 2017. The claimant, Loreto J. Gonzalez Herrera, participated personally with the assistance of CTS Language Link Spanish Language interpreter Luis, identification number 10342. Sandra Trejo participated on behalf of Iowa Workforce Development.

ISSUES:

Is the claimant available for work effective October 29, 2017?
Did the claimant fail to report as directed by a department representative or offer justifiable cause for their failure to do so?
Did the claimant fail to participate in a reemployment services class as directed 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 September 24, 2017. Claimant was selected to participate in the reemployment services program. A notice was mailed to the claimant on October 12, 2017, which stated the claimant was to report for a reemployment services appointment on October 23, 2017 at 9:30 a.m. The claimant did not receive the notice so he did not report for the appointment. Ms. Trejo, recognizing that the claimant had some language barriers, called him on October 25 to see if

she could reach him to reschedule his appointment. The claimant's voice mail box was full so she was unable to leave a voice mail message.

The claimant went to the Ottumwa local office on October 26. Ms. Trejo was not available to talk to him, but one of her coworkers set the claimant up with another workshop appointment on October 30. The claimant was personally given his notification that he was required to attend the reemployment services workshop on October 30. The claimant did not show up for his October 30, 2017 reemployment services appointment. The claimant's claim was locked and he was not paid benefits for the week ending November 4, 2017.

On November 6, 2017 the claimant called his local office and spoke to Ms. Trejo. He wanted to know why his claim was locked and he had not been paid his unemployment insurance benefits. He was again told that his claim was locked because he had not attended his scheduled reemployment services appointment on October 30. The claimant was then told that another reemployment services class was being held that day and that if he attended his claim would be unlocked from that point forward. The claimant attended the November 6, 2017 reemployment 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 appointment on October 30, 2017.

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 and the department of economic development will jointly 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.

(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.

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.

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.

The method of reporting shall be weekly if a voice response continued claim is filed, unless otherwise directed by an authorized representative of the department. An individual who files a voice response continued claim will have the benefit payment automatically deposited weekly in the individual's account at a financial institution or be paid by the mailing of a warrant on a biweekly basis.

In order for an individual to receive payment by direct deposit, the individual must provide the department with the appropriate bank routing code number and a checking or savings account number. 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.

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). 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's claim was not locked after he missed his first appointment on October 23 because he reported to his local office that he had never received the notice. The claimant was specifically told when he visited his local office on October 26 that he had to attend his next scheduled appointment on October 30. The claimant's allegation that he called someone in Des Moines and they told him he was not required to attend the October 30 appointment is simply not believable. The customer service line does not generally address reemployment services issues and they have no authority to tell any claimant and would not tell a claimant that he could skip an appointment. The claimant's argument that he did not have to attend the appointment because Ms. Trejo was his "social worker" and she did not assign him to attend is similarly not credible. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). The claimant was given specific instructions to attend the October 30 appointment by a workforce advisor and has not provided any reason that is justifiable cause for his failure to attend that appointment. Since the claimant did attend his reemployment services appointment on November 6, he is only ineligible to receive benefits for the one week period ending November 4, 2017.

DECISION:

The November 1, 2017, (reference 02) unemployment insurance decision is affirmed. The claimant has failed to report for a reemployment services appointment as directed. Benefits are denied for the one week period ending November 4, 2017.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

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