

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAVID A GAUMER
Claimant

APPEAL 17A-UI-12106-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 02/19/17
Claimant: Appellant (1R)**

Iowa Code § 96.4(3) - Able and Available
Iowa Admin. Code r. 871-24.2(1)e – Notice to Report
Iowa Admin. Code r. 871-24.23(11) – Failure to Report

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated November 20, 2017, (reference 10) that denied benefits because of a failure to report as directed. A telephone hearing was held on December 15, 2017. Proper notice of the hearing was given to the claimant. The claimant participated in the hearing. Claimant Exhibit A was admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant fail to report as directed or offer a good cause reason for failure to do so?
Is the claimant able to work and available for work effective October 22, 2017?

FINDINGS OF FACT:

Having heard the testimony and having examined the evidence in the record, the administrative law judge finds: On November 2, 2017, a notice was mailed to the claimant to be available for a call from IWD about his availability for work the week ending October 28, 2017. The call was scheduled for November 9, 2017. On November 6, 2017, the claimant sent an email to IWD to alert fact-finder he would not be able to attend the call but attached a letter in response (Claimant Exhibit A). The claimant again sent a second email on November 9, 2017 in response to missing the call and to address any information needed for the call. The reason the claimant did not participate is that he was attending his new job.

The underlying issue needing to be addressed at the fact-finding interview was whether the claimant was able to and available for work for the week ending October 28, 2017. The claimant indicated he mistakenly pushed the button indicating he was not available for work. However, on October 23, 2017, the claimant accepted full-time work at Aeroktek, and has been working on assignment, at Wells Fargo, earning \$13.00 per hour. The claimant stated he is

continuing to file weekly continued claims, in light of being employed full-time because he is dissatisfied with the rate of pay.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant has established a good cause reason for having failed to report as directed.

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

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 in the individual's account at a financial institution or on a selected debit card.

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

(3) 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.

The claimant in this case received the notice of fact-finding interview and made a good faith effort to participate in writing since he was unavailable at the time of the interview due to new employment. The claimant provided copies of the emails sent in advance and in response to the voicemail he received, and the administrative law judge is persuaded he has established a good cause reason for failing to report as directed.

However, the underlying issue of whether the claimant was able and available for work was not due to mistake. For the reasons that follow, the administrative law judge concludes the claimant is not able and available for work because he is working full-time. Therefore, benefits are denied.

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 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.

Iowa Admin. Code r. 871-24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

Iowa Employment Security Act was established with the clearly stated intent that unemployment reserves be used "for the benefit of persons unemployed through no fault of their own." Iowa Code § 96.2. The claimant in this case is not unemployed. The administrative law judge recognizes the claimant may feel underemployed based upon the rate of pay he is earning. Inasmuch as the claimant is working full-time for Aerotek, (on assignment at Wells Fargo), effective October 23, 2017, he has removed himself from the labor market to be able for work, available for full-time work, and earnestly seeking full-time employment. Therefore, he is not eligible for benefits.

REMAND: The issue of whether the claimant has been overpaid benefits since resuming full-time employment effective October 23, 2017 is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The November 20, 2017, (reference 10) unemployment insurance decision is affirmed. The claimant has established a good cause reason for failing to report as directed. However, the underlying issue was not the result of a reporting error. The claimant is not able and available for work effective October 22, 2017 due to full-time employment. Benefits are denied effective October 22, 2017. **REMAND:** The issue of whether the claimant has been overpaid benefits since resuming full-time employment effective October 23, 2017 is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn