

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIFFANY M GOLDMAN
Claimant

APPEAL 17A-UI-06362-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 01/22/17
Claimant: Appellant (4)

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:

Tiffany M. Goldman (claimant) filed a timely appeal from the June 19, 2017, reference 02, unemployment insurance decision that denied benefits because of a failure to report as directed. After due notice was issued, a telephone conference hearing was held on July 6, 2017. The claimant participated. No exhibits were offered or received into the record. Official notice was taken of the administrative record, specifically the fact-finding documents.

ISSUES:

Is the claimant able to and available for work?

Did the claimant fail to report as directed or offer a good cause reason for failure to do so?

FINDINGS OF FACT:

Having heard the testimony and having examined the evidence in the record, the administrative law judge finds: The claimant filed her initial claim for benefits the week of January 22, 2017 after being laid off of work as a Certified Nursing Assistant. The claimant was pregnant at the time, but she only had a 25-pound lifting restriction. The claimant has applied for numerous office positions that fit within her lifting restrictions. She had prior experience as a secretary and is currently enrolled in an online program for her medical billing certificate.

On June 6, 2017, the claimant contacted Iowa Workforce Development (IWD) to discuss extending her benefits. During the phone call, the claimant mentioned she was pregnant but stated she was able to and available for work. On June 7, 2017, a notice of fact-finding was mailed to the claimant informing her to be available for a call from IWD on June 16, 2017 at 8:40 a.m. During that time period, the claimant's mail was being held due to confusion at the mailbox. The claimant was aware she was not receiving mail, but did not inquire about why she was not receiving mail as she was relieved to not be receiving her bills. The claimant did not answer when called by the fact-finder or listen to the fact-finder's voice message as she was

receiving calls from bill collectors and did not normally answer unknown calls or listen to the messages.

On June 22, 2017, the claimant realized she had not received her unemployment insurance benefits for the prior week. She then contacted IWD and learned she had missed a fact-finding interview. She retrieved her mail which contained the notice of fact-finding and listened to her voice messages which included the fact-finder's voice message. The claimant then also filed her appeal. The following day, the claimant gave birth to her child. Her doctor released her back to work on Thursday, June 29, 2017, restricting her to a 20 pound lifting restriction in an office environment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not able to and available for work effective June 11, 2017 through July 1, 2017 and benefits are denied for that time period. Benefits are allowed effective July 2, 2017, provided the claimant is otherwise eligible.

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:

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. 871-24.22(1)a provides:

Benefits 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.23 provides, in relevant part:

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

(1) An individual who is ill and presently not able to perform work due to illness.

(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.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

The claimant has not established a good cause reason for her failure to report as directed. The claimant knew she was not receiving mail and made the decision not to pick up the mail that was being held for her. She also made the decision not to answer her phone or listen to voice messages. The claimant reported to IWD the following week on Thursday, June 22, 2017. The following day she gave birth to her child. The claimant was not available for work because she failed to report as directed for the two-week period ending June 24, 2017.

On Thursday, June 29, 2017, the claimant was released to work by her doctor after giving birth. She was not available for work the majority of the work week. Therefore, she was not able to or available for work through the week ending July 1, 2017. Benefits are denied effective June 11, 2017 through July 1, 2017.

The claimant is able to and available for work effective July 2, 2017. She has arranged child care, is actively looking for jobs, and is medically able to work. Benefits are allowed effective July 2, 2017, provided she is otherwise eligible.

DECISION:

The June 19, 2017, reference 02, unemployment insurance decision is modified in the claimant's favor. The claimant has not established a good cause reason for failing to report as directed and was not available for work for the three-week period ending July 1, 2017. Benefits are denied effective June 11, 2017, through July 1, 2017. The claimant has established that she is able to and available for work after that period. Benefits are allowed effective July 2, 2017, provided she is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn