

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

ADIR ORDAZ
Claimant

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

APPEAL 23A-UI-01030-PT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/13/22
Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Eligibility – Able to, available for, work search
Iowa Admin. Code r. 871-24.2(1)e – Eligibility – A&A – Failure to report
Iowa Admin. Code r. 871-24.23(11) – Eligibility – A&A – Failure to report

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 24, 2023, (reference 03) unemployment insurance decision that denied benefits effective January 15, 2023. After due notice was issued, a telephone conference hearing was scheduled for and held on February 16, 2023. Claimant participated personally. The administrative law judge took official notice of the administrative record.

ISSUES:

Whether claimant is able to and available for work.
Whether claimant failed to report as directed by a department representative.

FINDINGS OF FACT:

On January 5, 2023, Iowa Workforce Development (IWD) mailed claimant a notice instructing claimant to report for a telephonic fact-finding interview with a department representative at 1:45 p.m. on January 17, 2022. Claimant's roommates received the mail and put claimant's mail somewhere in the house; claimant did not see the notice until January 19, 2022. At 1:45 p.m. on January 17, 2022, a department representative called the phone number IWD had on record for the claimant. However, claimant did not answer because claimant had recently got a new phone and his phone number had changed.

On January 19, 2022, when claimant found his mail and read the notice, claimant went in-person to the local IowaWORKS center to try to resolve the issue. While there, claimant was told to continue filing his weekly claims. However, IWD did not resolve the issue or schedule a new fact-finding interview. On January 24, 2023, the department mailed claimant a decision informing claimant that due to his failure to report as instructed on the prior notice, effective January 15, 2023, claimant was no longer eligible to receive unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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:

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.

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.

Although IWD mailed the notice to claimant's address and called the phone number it had on record for the fact-finding interview, claimant did not receive the phone call because he had recently purchased a new phone and his phone number had changed. While it is claimant's responsibility to update his contact information, the record shows that as soon as claimant learned he missed the fact-finding interview, he attempted to resolve the problem by going to his local IowaWORKS center. As claimant did not receive the phone call to attend the telephonic fact-finding interview and claimant promptly attempted to fix his mistake, the administrative law judge concludes that claimant has shown good cause for his failure to report

as directed. Claimant is able to and available for work. Benefits are allowed provided claimant is otherwise eligible.

DECISION:

The January 24, 2023, (reference 03) unemployment insurance decision is reversed. Claimant is able to and available for work. Benefits are allowed provided claimant is otherwise eligible.



Patrick B. Thomas
Administrative Law Judge

February 23, 2023
Decision Dated and Mailed

pbt/mh

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.