

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

KARI R NELSON
Claimant

APPEAL NO: 12A-UI-09297-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 06/24/12

Claimant: Appellant (4)

Section 96.4-3 – Able and Available
871 IAC 24.2-1-e – Failure to Report

STATEMENT OF THE CASE:

Kari R. Nelson (claimant) appealed a representative's July 30, 2012 decision (reference 05) that concluded she was not qualified to receive unemployment insurance benefits due to an issue related to her eligibility. A hearing notice was mailed to the claimant's last-known address of record for a hearing on August 28, 2012; at the request and consent of the claimant, a telephone hearing was held on August 14, 2012. The claimant participated in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant disqualified from receiving unemployment insurance benefits for a failure to report as directed?

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant established an initial claim for unemployment insurance benefits effective June 24, 2012. On July 16, 2012 the Agency sent the claimant that she needed to report to "complete an additional application for job search assistance." The notice gave the claimant a deadline of 3:30 p.m. of July 26, 2012 to comply. When the claimant had not complied by July 27, the representative's decision denying benefits was issued on July 30. The claimant did subsequently make her additional application for job search assistance.

The reason the claimant did not more promptly comply with the notice to report was that she had been in a car accident on July 15. While she was recovering, she stayed at her mother's home through August 5. During that time, she was not receiving the mail being sent to her home address. When she returned home on or about August 6, she received her mail and saw

the notice and the representative's decision. She then made her appeal and made her application for job search assistance.

During the period of July 15 through August 4 the claimant had sufficient injuries that she was not able to work on the same basis as she had most recently been working.

REASONING AND CONCLUSIONS OF LAW:

A claimant can be found ineligible for unemployment insurance benefits for a failure to report as required.

871 IAC 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 and the payment of benefits, provided the individual is otherwise eligible, shall be on a biweekly basis by mail if the claimant files a Form 60-0151.

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 financial institution's account 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.

The claimant had a good reason why she had not reported as directed by the date directed. The open-ended lock on her eligibility for unemployment insurance benefits is removed.

However, there was a period of time during which the claimant is not eligible to receive unemployment insurance benefits. With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3. To be found able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); 871 IAC 24.22(1). A claimant must remain available for work on the same basis as when her base period wages were accrued. 871 IAC 24.22(2)f. A person who is ill or injured so as to be unable to work to the extent she had previously worked is not able and available for work, and not eligible to receive unemployment insurance benefits for that period. 871 IAC 24.23(1), (34).

The claimant was not able and available for work for the majority of the benefit weeks ending July 21, July 28, and August 4, 2012. Benefits are denied for those weeks. Benefits are allowed effective August 5, if the claimant is otherwise eligible.

DECISION:

The representative's July 30, 2012 decision (reference 05) is modified in favor of the claimant. The claimant was not able and available for work and not eligible to receive unemployment insurance benefits for the three-week period ending August 4, 2012. The claimant is able to work and available for work effective August 5, 2012, and from that date she is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs