

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LYNN M KAMM
Claimant

APPEAL 18A-UI-05163-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 02/25/18
Claimant: Appellant (1R)

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 April 26, 2018 (reference 03) unemployment insurance decision that found claimant was not eligible for unemployment benefits because claimant failed to participate in a reemployment and eligibility assessment. The parties were properly notified of the hearing. A telephone hearing was held on May 16, 2018. The claimant, Lynn M. Kamm, participated personally. Elmarie Schilling participated on behalf of Iowa Workforce Development (“IWD”). Claimant's Exhibit A was admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant available for work effective April 22, 2018?
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 and eligibility assessment appointment 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 an initial claim for unemployment insurance benefits with an effective date of February 25, 2018 after she separated from employment. Claimant was selected to participate in a reemployment and eligibility assessment on March 28, 2018, which she attended with Ms. Schilling. At the March 28, 2018 appointment, claimant was hand-delivered a Re-employment Services and Employment Assessment Agreement (“agreement”). The agreement provided that claimant was required to complete the re-employment services orientation on April 2, 2018. Claimant completed the re-employment services orientation on April 2, 2018,

pursuant to the agreement. The agreement also provided that claimant was required to complete the National Career Readiness Certificate ("NCRC") assessment within thirty days of March 28, 2018. The NCRC tests in three specific areas; applied math, graphic literacy, and workplace documents. A participant is given 55 minutes to complete each section. There is no specific passing score that a participant has to achieve; rather, the NCRC simply needs to be completed as far as a participant can complete it during the 55-minute period for each section.

Claimant was scheduled to complete the NCRC on April 4, 2018. The agreement warned claimant that failure to participate in the activities would result in the denial of unemployment insurance benefits. Claimant postponed the April 4, 2018 NCRC to a later date so that she could have additional time to practice for the NCRC. Claimant was then scheduled to complete the NCRC on April 25, 2018. Claimant appeared at her local IWD office to complete the NCRC on April 25, 2018 but did not complete it because she refused to agree to the terms and conditions. Claimant then left before the NCRC was completed. Claimant then rescheduled to take the NCRC on May 2, 2018; however, claimant again refused to agree to the terms and conditions of the assessment on May 2, 2018 and did not complete it at that time. Claimant has not completed the NCRC during her current benefit claim year.

On April 25, 2018, claimant had met with Ms. Schilling and discussed with her that she did not agree with the terms and conditions of the assessment. Ms. Schilling gave claimant a telephone number to contact ACT. ACT is the third party administrator of the NCRC. When claimant telephoned ACT about the terms and conditions of the test, she was told that she could go to a different location to take the test. Claimant did not go to a different location to take the test because she did not have transportation. The terms and conditions of the assessment do not include the claimant being required to provide her religious affiliation for the purposes of the test.

The issue of whether claimant is able to and available for work due to her lack of transportation has not been the subject of an initial investigation and determination by the Benefits Bureau. The question of whether the claimant has been able to and available for work beginning February 25, 2018 due to lack of transportation will be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not provide justifiable cause for her failure to report as directed to participate in the NCRC appointment.

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:

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.

Iowa Admin. Code r. 871-24.11 provides in pertinent part:

Eligibility review program.

(1) Purpose. The eligibility review program is used to accelerate the individual's return to work and systematically review the individual's efforts toward the same goal.

(2) Individuals requiring an eligibility review.

a. Selected individuals claiming intrastate benefits and interstate benefits shall be required to complete the eligibility review Form 60-0232 at times determined by the department after they have filed an initial or additional claim.

(4) Eligibility review procedure.

a. After an individual has claimed a number of weeks of intrastate benefits as designated by the department, the workforce development center shall receive a computer selected list of individuals claiming benefits. The list shall be retained in the workforce development center so work search assistance and reemployment services can be provided as needed by the claimant.

- b. No eligibility review will be performed on an individual unless monetary and nonmonetary eligibility are established.
- c. An Eligibility Review Questionnaire shall be mailed or provided to the individual.
- d. A copy of the Eligibility Review Questionnaire shall be sent to the workforce development center only on an individual who is in an active status at the time of its printing. If the individual fails to respond to the Eligibility Review Questionnaire within the designated period of time printed on the questionnaire, the workforce development center shall issue a Form 60-0131, Notice to Report. If the individual does not respond after this action has been taken, the department must issue an appropriate failure to report decision and lock the claim to prevent payment.
- e. In cases of illness, injury or pregnancy, an unemployment insurance representative shall determine when and if a personal appearance shall be conducted. The representative shall be responsible for determining continuing eligibility or noneligibility of the individual based on the information obtained on the Form 60-0141, Request for Medical Report, or the facts presented during the interview. If the representative believes an additional Form 60-0141 may be needed, the representative shall initiate the request in the regular manner. Special attention shall be given to work search, i.e., number of contacts, types of contacts and the available job market information.
- f. Before an administrative law judge can rule on a disqualification for failure to report at an Iowa workforce development center as directed, there must be evidence to show that the individual was required to report for an interview.

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).

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 App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own

common sense and experience, the Administrative Law Judge finds that Ms. Schilling's testimony that the terms and conditions of the NCRC do not require the claimant to provide information regarding her religious affiliation is more persuasive than claimant's testimony that it does. Claimant did not remember any specific statements regarding religious affiliation that she believed the terms and conditions contained and she did not provide any documents or other tangible evidence that the NCRC required her to provide information about her religious affiliation. As such, claimant has failed to provide a justifiable cause reason for her failure to complete the NCRC as directed. Benefits are denied, effective April 22, 2018 and continuing until claimant completes the NCRC, and provided she is otherwise eligible.

DECISION:

The April 26, 2018 (reference 03) unemployment insurance decision is affirmed. The claimant has not provided justifiable cause for having failed to report for the NCRC assessment as directed. Benefits are denied effective April 22, 2018, and continuing until the claimant completes the NCRC assessment, and provided she is otherwise eligible.

REMAND: The availability issue of whether the claimant has been able to and available for work due to lack of transportation as delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs