

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FELIX M DELGADO JR
Claimant

APPEAL NO. 09A-UI-16034-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES STAFFING SERVICES INC
Employer

Original Claim: 07/05/09

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Felix M. Delgado, Jr. (claimant) appealed a representative's October 19, 2009 decision (reference 04) that concluded he was not qualified to receive unemployment insurance benefits because he had not responded to an Agency notice to respond to an issue relating to his eligibility after a separation from employment from DES Staffing Services, Inc. (employer). Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held on December 1, 2009. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate 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 in relation to a fact-finding interview?

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 July 5, 2009. On September 18, 2009, the administrative law judge issued a decision under 09A-UI-11920-DT finding the claimant's separation non-disqualifying but remanding the matter to the Claims Section on the issues of a potential refusal of work and being able and available for work. On October 2, 2009, the Agency sent the claimant a notice of a fact-finding interview to be held on October 16. The notice did not specify any action required of the claimant or indicate he could be disqualified if he failed to participate, nor did the form provide any information as to what the claimant should do if he was unable to participate. When the Claims representative attempted to call the claimant for the fact-finding interview, the claimant's telephone had been disconnected. The Claims representative found that there was no disqualifying refusal, because the offer of work was made when there was no unemployment insurance benefits claim in effect by the claimant, and also noted that the availability issue, lack of adequate child care, was only shown to be an issue at a time there was no

claim in effect. However, the representative issued a decision disqualifying the claimant as not being able and available for work because he had not participated in the fact-finding interview.

The question as to the adequacy of the claimant's child care arrangements related to the period on or about the first week of June 2009. The claimant has made adequate arrangements for child care since establishing his claim for unemployment insurance benefits effective July 5, 2009.

REASONING AND CONCLUSIONS OF LAW:

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

871 IAC 24.23(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.

A notice of a scheduled fact-finding interview is not the same type of "notice to report" as those which might result in disqualification for failure to participate. The claimant is not disqualified merely for failing to participate in the fact-finding interview.

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, be available for work, and be earnestly and actively seeking work. Iowa Code § 96.4-3. The availability issue in this case related to the claimant's lack of child care. 871 IAC 24.23(8). While the claimant may not have had adequate child care arrangements during early June, during the weeks since establishing his claims effective July 5 the claimant has had adequate child care arrangements.

DECISION:

The representative's October 19, 2009 decision (reference 04) is reversed. The claimant is not disqualified merely for failing to participate in the fact-finding interview. He has had adequate child care arrangements since establishing his claim for unemployment insurance benefits effective July 5, 2009, and is therefore able and available for work. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw