

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RONALD E FLEMMING**  
Claimant

**APPEAL NO. 07A-UI-10477-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CITY OF SABULA**  
Employer

**OC: 09/13/07 R: 04**  
**Claimant: Appellant (3)**

Section 96.4-3 - Able to and Available for Work  
871 IAC 24.23(11) - Failure to Report as Directed  
Section 96.3-7 - Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated November 7, 2007, reference 02, that concluded he had failed to report as directed for an interview. A telephone hearing was held on December 11, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Dorothy O'Brien. Paul Macek participated in the hearing on behalf of the employer with a witness, Mike Cotton. Exhibit A was admitted into evidence at the hearing.

**ISSUE:**

Was the claimant able to and available for work?

Did the claimant fail to report to the Agency as directed?

Was the claimant overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant worked full time as the city clerk for the employer from March 1982 to May 5, 2006. He stopped working after May 5, 2006, because he was unable to work due to emotional distress, depression, and anxiety. From May 2006 through August 16, 2007, the claimant was totally disabled from returning to any kind of work due to his psychological problems.

The claimant filed a new claim for unemployment insurance benefits with an effective date of September 16, 2007. A notice was mailed to the claimant on October 29, 2007, that stated there was a telephone interview scheduled for November 5, 2007, to discuss the issue of whether he was able and available for work. The notice also stated that failure to participate in the interview could result in being disqualified from receiving unemployment insurance benefits.

The claimant received the notice, but he had an appeal hearing scheduled for November 13, 2007, regarding his separation from employment and thought that it was the same proceeding.

The claimant was running errands and was not available for the call on November 5, 2007. The claimant did not contact the Agency to follow up on the fact-finding interview until a decision was issued on November 7, 2007, that concluded he was ineligible for failing to report to work as directed. That decision stated that he had to report to his local Workforce Development center to remove the disqualification. The claimant did this, but the Agency did not remove the disqualification.

As of September 2007, the claimant's condition had improved and he was capable of returning to work in a very low stress environment where he would not be subjected to conflict with the public and with co-workers. His treating psychologist recommended that to maximize his opportunity for success, he needed to start working part-time and have his workday increased to full time. The claimant has been seeking full- or part-time work as a salesperson in antique malls or other retail sales positions.

The claimant filed for and received a total of \$2,429.00 in unemployment insurance benefits for the weeks between September 16 and November 3, 2007.

#### **REASONING AND CONCLUSIONS OF LAW:**

The first issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3. The unemployment insurance rules provide that a person must be physically able to work, not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b. Since the claimant worked full time for the employer, he is required to be able work full time to receive benefits.

The claimant's treating psychologist states the claimant is able to work in a "very low stress environment" where he would not be subjected to conflict with the public and with co-workers and recommends that he start working part time and have his work day increased to full time. He is seeking employment as a salesperson in an antique mall or other retail store. These jobs certainly involve daily contact with the public and potential conflicts, as members of the public are not always satisfied with the products being sold or the service being given. Furthermore, going into a job, it is impossible to tell whether the work relationships with fellow employees are going to be harmonious or discordant. The claimant is seeking full-time employment, but his doctor is recommending a kind of work-hardening transition where he gradually works up to full time. This shows the claimant is limited to a tailor-made job that would not be generally available in the labor market.

The claimant is ineligible for benefits effective September 16, 2007, and continuing until he reopens his claim for benefits and establishes he meets the law's requirement that he be able to and available for work.

The second issue in this case is whether the claimant is ineligible for benefits because he did not report to the Agency as directed. Under the unemployment insurance rules, a claimant who fails to report as directed to the Agency in response to a notice mailed to the claimant is deemed unavailable for work. 871 IAC 24.23(11).

The claimant has not shown good cause for his failure to be available for the fact-finding interview on November 5, 2007. He assumed the appeal hearing on November 13 was covering the same matter, but he did not contact anyone with the Agency to confirm this until after he missed the interview and was disqualified. He would be ineligible for benefits based on

his failure to report only for only the week ending November 10, 2007, because the local workforce center did not remove the disqualification the following week when he contacted the office.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid \$2,429.00 in benefits for the weeks between September 16 and November 3, 2007.

**DECISION:**

The unemployment insurance decision dated November 7, 2007, reference 02, is modified. The claimant is ineligible for benefits effective September 16, 2007, and continuing until he reopens his claim for benefits and establishes he meets the law's requirement that he be able to and available for work. Additionally, he is ineligible for benefits for the week ending November 10, 2007, based on his failure to participate in the fact-finding interview that week. The claimant was overpaid \$2,429.00 in unemployment insurance benefits, which must be repaid.

---

Steven A. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

saw/kjw