

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JESSICA J ONKEN**  
Claimant

**APPEAL NO. 16A-UI-09971-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 07/17/16**  
**Claimant: Appellant (4/R)**

Iowa Code section 96.4(3) – Able & Available  
871 IAC 24.2(1)(e) – Failure to Report as Directed

**STATEMENT OF THE CASE:**

Jessica Onken filed a timely appeal from the September 9, 2016, reference 01, decision that denied benefits effective September 4, 2016, based on an agency conclusion that Ms. Onken had failed to report as directed. After due notice was issued, a hearing was held on September 27, 2016. Ms. Onken participated. Exhibit A was received into evidence. The administrative law judge took official notice of the following agency administrative records: KCCO, DBRO, KFFV (The record of the September 1, 2016 notice of the September 7, 2016 fact-finding interview), and the Workforce Development representative's notes concerning their attempt to reach Ms. Onken at the time of the fact-finding interview.

**ISSUES:**

Whether Ms. Onken failed to report to Iowa Workforce Development as directed.

Whether Ms. Onken has been able to work and available for work within the meaning of the law since September 4, 2016.

Whether Ms. Onken has been temporarily unemployed since September 4, 2016.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Jessica Onken established an original claim for benefits that was effective July 17, 2016. Since that time, Ms. Onken has consistently made weekly claims. When Ms. Onken filed her claim for benefits, she reported that she was attached to a job, but laid off. Based on the information provided by Ms. Onken, Workforce Development coded Ms. Onken as a "group 3" claimant, one who is job attached, but temporarily laid off. Ms. Onken's most recent employer is Farrell Tax & Accounting, employer account number 276373. Ms. Onken assists the employer on a full-time basis during tax season and on a part-time basis outside tax season. Tax season most recently concluded in mid-April 2016. At the time Ms. Onken established the original claim that was effective July 17, 2016, she had most recently performed work for the employer on July 15, 2016. Ms. Onken reports that she expects to return to the employment in mid-October.

Ms. Onken has not looked for other employment since she filed her claim for unemployment insurance benefits. Based on the information provided by Ms. Onken, Workforce Development did not direct Ms. Onken to search for other employment.

When Ms. Onken made her weekly claim for the week that ended August 27, 2016, she erroneously reported that she had refused work during that week. Ms. Onken had not refused an offer of employment that week. Ms. Onken's report that she had refused work that week caused the Workforce Development computer to flag her claim. On September 1, 2016, Workforce Development mailed notice to Ms. Onken of a fact-finding interview scheduled for 3:00 p.m. on September 7, 2016. Ms. Onken did not receive the notice until September 9, 2016. At the time set for the fact-finding interview, a Workforce Development claims deputy attempted to reach Ms. Onken at the telephone number she had on record with the agency. When Ms. Onken did not answer, the deputy left a voice mail message that included appeal rights. Ms. Onken did not listen to the message until September 9, 2016. In response to the phone message and to belatedly receiving the notice of the fact-finding interview, Ms. Onken contacted the claims deputy, who advised her that it was too late to provide information because the decision had already been submitted. The claims deputy had entered the decision into the computer system on September 8 so that it could be mailed on September 9. The decision denied benefits effective September 4, 2016.

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

Iowa Code § 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".

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. 871 IAC 24.2(1)(e). 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. 871 IAC 24.23(11).

The evidence establishes that Ms. Onken made a mistake when she reported for the week that ended August 27, 2016 that she had refused work. Ms. Onken had not refused work that week.

The evidence establishes that Ms. Onken did not fail to report as directed. Ms. Onken did not receive notice of the September 7, 2016 fact-finding interview until after the fact-finding had occurred. As soon as Ms. Onken learned of the fact-finding interview, she made contact with the agency and attempted to provide information. No disqualification will enter based on the alleged failure to report.

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(20) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

Iowa Code section 96.19(38)(c) sets forth the legal definition of "temporary unemployment" for use in determining a claimant's eligibility for unemployment insurance benefits, as follows:

An individual shall be deemed *temporarily unemployed* if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Ms. Onken filed her claim as a job-attached, temporarily unemployed claimant. Under the legal definition above, Ms. Onken was only temporarily unemployed through the week that ended August 13, 2016. After that, she was simply laid off and subject to the requirement that she make herself available for other employment and engage in an active and earnest search for new employment during each week for which she claimed unemployment insurance benefits. Because the agency has not previously notified Ms. Onken that she is subject to the work search requirement, the administrative law judge concludes that Ms. Onken has met the able and available requirement for the benefit weeks between September 4, 2016 and September 24, 2016. Ms. Onken is eligible for benefits for those three weeks, provided she meets all other eligibility requirements. However, at 10 weeks into the claim, Ms. Onken cannot be deemed *temporarily unemployed*. Effective immediately, Ms. Onken must commence an active and earnest search for new employment. Ms. Onken must make at least two job contacts each week for which she claims unemployment insurance benefits. This matter will be remanded to the Benefits Bureau for designation of Ms. Onken as a group 6 claimant, subject to the work search requirement.

**DECISION:**

The September 9, 2016, reference 01, decision is modified as follows. The claimant did not fail to report as directed in response to the September 1, 2016 notice of the September 7, 2016 fact-finding interview. No disqualification will enter based on the purported failure to report. The claimant met the able and available requirement for the period that September 4-24, 2016 and is eligible for benefits for that three-week period, provided she meets all other eligibility requirements. The claimant has not been temporarily unemployed at any point since September 4, 2016. Effective immediately, the claimant must commence an active and earnest search for new employment. The claimant must make at least two job contacts each week for which she claims unemployment insurance benefits.

This matter is remanded to the Benefits Bureau for redesignation of the claimant as a group 6 claimant, effective September 27, 2016.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs