

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SCOTT G CLARK**  
Claimant

**APPEAL 20A-UI-14053-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 08/23/20  
Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Able to and Available for work  
Iowa Code § 96.6(2) – Timeliness of Appeal  
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

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the October 15, 2020 (reference 02) 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 January 5, 2021. The claimant participated personally. Linda Drake participated on behalf of Iowa Workforce Development (“IWD”). IWD Exhibits 1 – 5 were admitted. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records.

**ISSUES:**

Is the appeal considered timely?

Was the claimant available for work?

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: A decision that disqualified the claimant from receipt of unemployment insurance benefits was mailed to the claimant’s correct address of record on October 15, 2020. The claimant received the decision in the mail. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by October 25, 2020. The claimant filed an appeal with the Appeals Bureau on November 4, 2020. The claimant was previously speaking to an IWD representative about why he was not being paid for the week he was disqualified. He had contacted the IWD representative about the decision on October 17, 2020 asking why he was

disqualified. See Exhibit 4. By the time he was verbally advised by the IWD representative to file an appeal, it was past the appeal deadline.

The claimant filed a claim for unemployment insurance benefits with an effective date of August 23, 2020. Claimant was selected to participate in a reemployment and eligibility assessment on October 5, 2020, which he did.

During that phone interview, the claimant was instructed that there were additional assignments to complete the reemployment assessment. Claimant chose to watch a video and send a summary to his advisor about the video on or before October 12, 2020. See Exhibit 2. A copy of the requirements were emailed to him and he did receive them.

Claimant watched the video but failed to email a summary to his IWD representative. He did not read the instructions thoroughly about his requirement to submit a summary of the video. His claim was locked when he failed to submit a written report by October 12, 2020. Claimant completed the report on October 19, 2020 and his claim was unlocked at that time. See Exhibit 4.

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

For the reasons that follow, the administrative law judge concludes as follows:

The first issue is whether the claimant filed a timely appeal. The administrative law judge concludes the appeal shall be deemed timely.

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of issuing the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was issued, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief

from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The ten calendar days for appeal begins running on the issued date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows that more than ten calendar days elapsed between the issuing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982).

However, in this case, the claimant's delay in submission was due to division error or misinformation pursuant to Iowa Admin. Code r. 871-24.35(2).

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

As such, claimant's failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to division error or misinformation pursuant to Iowa Admin. Code r. 871-24.35(2). The appeal shall be considered timely.

The next issue is whether the claimant failed to report as directed by a department representative and complete his reemployment services requirements. The administrative law judge finds that he did fail to do so.

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 section 96.4(7) provides:

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. 871-24.2(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.

(1) An individual who files a weekly continued claim will have the benefit payment automatically deposited weekly on a debit card specified by the department.

(2) 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. 871-24.6(1-6) provides:

Reemployment services and eligibility assessment procedure.

(1) The department of workforce development will provide a program which consists of profiling claimants and providing reemployment services.

(1) Purpose.

a 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.

b. The eligibility assessment program is used to accelerate the individual's return to work and systematically review the individual's efforts towards the same goal.

(3) Reemployment services and eligibility assessment 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 or eligibility assessment. The claimant shall contact the agency prior to the scheduled appointment or service to advise the department of the justifiable cause..

- 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. Justifiable cause includes when the claimant is scheduled for an employment interview, is verified return to work, or both prior to the scheduled appointment or service.

b. Reserved.

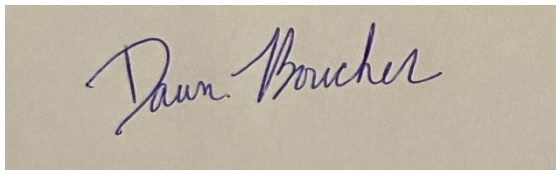
This rule is intended to implement Iowa Code section 96.4(7).

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).

In this case, the claimant did not complete the summary as required to do so prior to October 12, 2020. This was because he failed to thoroughly review the requirements in the notification that was sent to him. This is not considered justifiable cause for his failure to fully participate as required pursuant to Iowa Admin. Code r. 871-24.6(6). As such, claimant has failed to establish a justifiable cause reason for his failure to complete the reemployment services requirements as directed. Benefits are denied effective October 11, 2020 and continuing until he completed the requirements.

**DECISION:**

The appeal is considered timely. The October 15, 2020 (reference 02) unemployment insurance decision is affirmed. The claimant has failed to provide justifiable cause for his failure to complete the required reemployment services assignment. Benefits are denied effective October 11, 2020 and continuing until the assignment was completed.

A rectangular box containing a handwritten signature in blue ink that reads "Dawn Boucher".

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Dawn Boucher  
Administrative Law Judge

January 22, 2021  
Decision Dated and Mailed

db/scn

**Note to Claimant**

- This decision may determine you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law and if you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance (“PUA”) section of the Coronavirus Aid, Relief, and Economic Security Act (“Cares Act”) that discusses eligibility for claimants who are unemployed due to the Coronavirus.
- **You will need to apply for PUA to determine your eligibility under the program.**  
For additional information on how to apply for PUA go to:  
<https://www.iowaworkforcedevelopment.gov/pua-information>.
- If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA, please visit:  
<https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to “Submit Proof Here.” You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting:  
<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.
- If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.