

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOHN A FULLER
Claimant

APPEAL 21A-UI-24614-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 08/22/21
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the October 25, 2021 (reference 03) unemployment insurance decision that found claimant was not eligible for unemployment benefits because claimant failed to report for a reemployment services appointment. The parties were properly notified of the hearing. A telephone hearing was held at 3:00 p.m. on Monday, January 3, 2022. The claimant, John A. Fuller, participated personally. Steven Marotti, Career Planner, participated on behalf of Iowa Workforce Development (“IWD”). IWD Exhibits 1 through 5 were admitted. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records.

ISSUES:

Is the claimant available for work effective October 17, 2021?
Did the claimant fail to report as directed by a department representative to participate in a reemployment services appointment 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 a claim for unemployment insurance benefits with an effective date of August 22, 2021. Claimant was selected to participate in a reemployment services appointment on October 19, 2021. Claimant had not previously participated in this appointment during this claim year.

Claimant received the notice to report for the appointment. Claimant had planned to attend the scheduled appointment. However, the night before the appointment he sprayed for a bedbug infestation and became ill as a result of the spray. Claimant did not contact IWD prior to the appointment to inform anyone of the reason he could not attend the appointment. Claimant

contacted the agency the day after the scheduled appointment to report the reason he failed to attend the appointment. During that conversation, he arranged to attend a “make-up” appointment on October 27. Claimant did not report to this meeting either. He did not make contact with anyone at IWD to report that he could not attend the October 27 meeting. Once he received the October 25, 2021 (reference 03) decision denying benefits, he stopped trying to reach the agency.

The parties agree that IWD reached out to the claimant in December 2021 to reschedule this appointment. Claimant attended the appointment in late 2021. After claimant attended the appointment, IWD unlocked his claim and the claimant resumed receiving benefits.

During testimony, claimant indicated he was ill with COVID-19 for multiple weeks in September and early October 2021. Claimant reported that he was able to work and available for work during this time, and he received benefits for these weeks.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not provide justifiable cause for the failure to report as directed to participate in a reemployment services appointment. Benefits are denied effective October 17, 2021, and continuing until the claimant reported for this appointment.

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:

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.

(2) 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.

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

(Emphasis added).

Each week a claimant files a claim for benefits he must be able to and available for work. Iowa Code § 96.4(3). To maintain continued eligibility, a claimant shall report as directed by an authorized representative. 871 IAC 24.2(1)e. A claimant who fails to report as directed by notice mailed to the claimant is deemed unavailable for work. Iowa Admin. Code r. 24.23(11).

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. *Id.* Justifiable cause for failure to participate includes 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. *Id.* The claimant shall contact the agency **prior to the scheduled appointment or service** to advise the department of the justifiable cause. *Id.* Failure to report for the appointment, failure to contact the agency prior to the scheduled appointment or service to advise the department of the justifiable cause for missing the appointment, or failure to have justifiable cause for failing to report for the appointment means the claimant has failed to meet the availability requirements of the law. *Id.*

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 the agency's documentation and testimony more credible than claimant's testimony. While he credibly testified that he was ill on the date of the appointment, he failed to explain how his illness prevented him from successfully contacting Mark Holloway on October 19. Claimant made reference to the general office number recording and denied having an email address for Holloway. However, Exhibit 1a – the document claimant admits receiving in the mail – lists both Holloway's direct extension and his email address so claimant could directly communicate with him.

The claimant received the notice and failed to report as directed. The claimant did not notify IWD of the reason that he could not attend the appointment prior to the appointment time. Claimant failed to present justifiable cause for the failure to report as directed for a reemployment services appointment.

DECISION:

The October 25, 2021 (reference 03) unemployment insurance decision is affirmed. The claimant has not provided justifiable cause for having failed to report for a reemployment services appointment. Benefits are denied effective October 17, 2021, and continuing until the claimant reported for the reemployment services appointment.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

January 28, 2022
Decision Dated and Mailed

lj/mh