

Mr. Burke needed to make his weekly phone report for the benefit week that ended September 3, 2005, Ms. Wilson was not available to assist Mr. Burke. Mr. Burke got nervous while he was using the telephone reporting system and pushed the wrong button on the phone in response to the question of whether he was able and available for employment. By pushing the wrong button on the phone, Mr. Burke provided information that he was not able and available for employment when, in fact, he was. Mr. Burke had gone to two employers during the week in question and submitted applications. Mr. Burke was actively and earnestly seeking employment. Mr. Burke's health was such that he was able to work if offered a job.

In response to Mr. Burke's telephone report for the benefit week that ended September 3, 2005, Workforce Development mailed him notice that he would be required to participate in a telephone interview. The notice was mailed on September 6 and advised Mr. Burke that he would need to be available by telephone on September 15 between 2:00 p.m. and 3:00 p.m. Mr. Burke was home at the appointed time, as was his sister-in-law, but the telephone call from Workforce Development did not come. Mr. Burke's sister-in-law remained at home until 3:30 p.m. and the telephone call still had not come. Mr. Burke subsequently made several attempts to utilize the number provided on the notice to contact the designated Workforce Development representative. Mr. Burke made contact with the Agency, but the Agency could not connect him with the designated representative.

Contrary to the "Explanation of Decision" section of the reference 02 decision, Mr. Burke was never advised that he needed to appear at his local Workforce Development Center.

REASONING AND CONCLUSIONS OF LAW:

This case presents two issues for the administrative law judge's consideration. The first question is whether Mr. Burke was able and available during or after the benefit week that ended September 3, 2005. A person who is otherwise eligible for benefits must be able and available for work, as well as actively and earnestly seeking employment. See Iowa Code section 96.4(3). Based on the evidence in the record and the applicable law, the administrative law judge concludes that Mr. Burke was, in fact, able and available for work at all times in question.

The second question is whether Mr. Burke failed to report as directed. A person who is receiving unemployment insurance benefits is required to report to Workforce Development as the Agency directs them to do so. See 871 IAC 24(1)(e). The Agency directed Mr. Burke to make himself available for a telephone interview. The Agency representative apparently dialed the wrong number. Mr. Burke complied with the notice and made himself available for a telephone call that did not come. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Burke did not, in fact, fail to report as directed.

DECISION:

The Agency representative's decision dated September 19, 2005, reference 02, is reversed. The claimant has been able and available for employment since establishing his claim for benefits. The claimant did not fail to report as directed. The claimant is eligible for benefits, provided he is otherwise eligible.

jt/kjw