

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**ELVIS BERNAUER**  
Claimant

**IOWAWORKS  
REEMPLOYMENT SERVICES**

**APPEAL NO. 20A-UI-12760-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/30/20**  
**Claimant: Appellant (1)**

Iowa Code Section 96.4(3) – Able & Available  
Iowa Code Section 96.4(7) – Reemployment Services

**STATEMENT OF THE CASE:**

Elvis Bernauer filed a timely appeal from the October 9, 2020, reference 02, decision that denied benefits for the period beginning October 4, 2020, based the Agency representative's determination that he had failed to report as directed for reemployment and eligibility assessment services on October 7, 2020 and therefore did not meet the availability requirements. After due notice was issued, a hearing was held on December 15, 2020. Mr. Bernauer participated. Martha Suarez de Young, RESEA Career Planner appeared on behalf of Iowa Workforce Development Reemployment Services. Exhibits `1 through 5 and A were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, and the October 15, 2020, reference 03, decision.

**ISSUES:**

Whether the claimant met the availability requirements during the week of October 4-10, 2020.  
Whether the claimant failed to report as directed for Reemployment Services on October 7, 2020.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Elvis Bernauer established an original claim for benefits that was effective August 30, 2020. Mr. Bernauer made weekly claims for the weeks between August 30, 2020 and October 17, 2020. The weekly claims included a claim for the week of October 4-10, 2020.

On September 30, 2020, Mr. Bernauer met by telephone with Martha Suarez de Young, RESEA Career Planner, for a Reemployment Services and Eligible Assessment (RESEA) initial appointment. During that contact, Ms. Suarez de Young reviewed Mr. Bernauer's job search activities and reviewed the availability requirements, which included the RESEA requirement of participating in a Virtual Job Club workshop set for 9:00 a.m. to 10:30 a.m. on October 7, 2020. During the telephonic meeting on September 30, 2020, Mr. Bernauer agreed to participate in the

Virtual Job Club workshop set for October 7, 2020. During the telephonic meeting on September 30, 2020, Ms. Suarez de Young explained to Mr. Bernauer that if he did not participate in the Virtual Job Club as scheduled, his unemployment insurance benefits would be interrupted. During the telephonic meeting on September 30, 2020, Mr. Bernauer advised that he had participated in multiple interviews with prospective employer TaxAct and expected an offer of employment to be forthcoming in the near future. During the September 30, 2020 meeting, Ms. Suarez de Young told Mr. Bernauer that if he accepted an offer of employment, he should let her know, so that she could cancel his participation in the October 7, 2020 Virtual Job Club. Ms. Suarez de Young told Mr. Bernauer that even if he accepted a job offer, he would need to continue to make a weekly job search until he started in the new employment, if he desired to continue his claim for benefits until the new job started.

Immediately following the September 30, 2020 meeting, Ms. Suarez de Young sent an email message to Mr. Bernauer to recap the verbal agreement and expectations that has been discussed during the telephone call and to provide a link Mr. Bernauer could use to sign into the Virtual Job Club. The email included the date and time of the Virtual Job Club. The email included Ms. Suarez de Young's contact information. In addition, Ms. Suarez de Young mailed and emailed to Mr. Bernauer a Re-Employment Services and Eligibility Assessment (RESEA) Agreement that included the October 7, 2020 Virtual Job Club requirement, as well as notice that failure to participate without justifiable cause and prior notice would result in denial of benefits. The RESEA agreement included Ms. Suarez de Young's contact information.

On the afternoon of September 30, 2020, Mr. Bernauer received an offer of employment from TaxAct and accepted the offer. On October 2, 2020, Mr. Bernauer learned that his start date with TaxAct would be October 19, 2020. On October 2, 2020, Mr. Bernauer drafted an email message to Ms. Suarez de Young regarding the accepted job offer and the October 19, 2020 start date. Mr. Bernauer did not send that email message.

When Mr. Bernauer did not appear for the Virtual Job Club set for October 7, 2020, Ms. Suarez de Young entered a decision on October 8, 2020 that denied benefits effective October 4, 2020, based on Mr. Bernauer's failure to report as directed for the October 7 Virtual Job Club. IWD mailed the decision to Mr. Bernauer on October 9, 2020.

On October 13, 2020, Mr. Bernauer discerned that no weekly benefits had been deposited into his bank account for the week that ended October 10, 2020. Mr. Bernauer contacted Ms. Suarez de Young regarding the interruption of benefits, the accepted job offer, and the October 19 start date. Ms. Suarez de Young advised Mr. Bernauer that benefits had been discontinued due to his failure to participate in the October 7, 2020 Virtual Job Club. Ms. Suarez de Young provided Mr. Bernauer with the link so that he could participate in the Virtual Job Club set for October 14, 2020. Mr. Bernauer participated in the Virtual Job Club set for October 14, 2020. Ms. Suarez de Young then entered a decision that allowed benefits effective October 11, 2020, based on Mr. Bernauer's fulfillment of the Virtual Job Club participation requirement.

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

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 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 provides, in relevant part, as follows:

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

24.23(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 Code Section 96.4(7) provides as follows:

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 Administrative Code rule 871 24.2(1)(e) provides as follows:

Procedures for workers desiring to file a claim for benefits for unemployment insurance.

24.2(1) Section 96.6 of the employment security law of Iowa states that claims for benefits shall be made in accordance with such rules as the department prescribes. The department of workforce development accordingly prescribes:

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 Administrative Code rule 871-24.6(6)(a) provides as follows:

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.

The evidence in the record establishes that Mr. Bernauer failed to report as directed for reemployment services, the Virtual Job Club, on October 7, 2020, as directed by the authorized Agency representative. Ms. Bernauer's acceptance of the job offer with TaxAct and the confirmed start date of October 19, 2020 provided justifiable cause for not participating in the October 7, 2020 Virtual Job Club. However, Mr. Bernauer failed to comply with the requirement that he notify Ms. Suarez de Young of that justifiable cause in advance of the October 7, 2020 reemployment services appointment. Mr. Bernauer did not meet the availability requirement and is not eligible for benefits for the week of October 4-10, 2020.

**DECISION:**

The October 9, 2020, reference 02, is affirmed. The claimant failed to participate in reemployment services on October 7, 2020 without providing the required prior notice of justifiable cause for not participating. The claimant thereby did not satisfy the availability requirement and is not eligible for benefits for that week.

A handwritten signature in black ink that reads "James E. Timberland". The signature is written in a cursive style and is positioned above a horizontal line.

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James E. Timberland  
Administrative Law Judge

December 28, 2020  
Decision Dated and Mailed

jet/scn