

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DAVID L VOSDINGH**  
Claimant

**APPEAL 21A-UI-18016-CS-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
REEMPLOYMENT SERVICES**

**OC: 03/07/21  
Claimant: Appellant (5)**

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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:**

On August 16, 2021, the claimant/appellant filed an appeal from the August 9, 2021 (reference 3) unemployment insurance decision that found claimant was not eligible for unemployment benefits because the claimant failed to report for a reemployment services appointment. The parties were properly notified of the hearing. A telephone hearing was held on October 8, 2021. This hearing was held together with appeal 21A-UI-18017-CS-T. The claimant participated personally. Rita Miller participated on behalf of Iowa Workforce Development (“IWD”). IWD Exhibits 1, 2, 3, 4, and 5 were admitted into evidence. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records.

**ISSUES:**

Whether the claimant was available for work effective August 8, 2021.  
Whether the claimant failed to report as directed by a department representative to participate in a reemployment services appointment.

**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 March 7, 2021. The claimant was selected to participate in a subsequent reemployment services telephone appointment on August 6, 2021. (Exhibit One, Page 1a). The claimant had previously participated in this appointment during this claim year. Claimant did participate during the telephone appointment.

During the phone call, Claimant informed Ms. Miller that he had open heart surgery on June 17, 2021. Claimant had a subsequent surgery on August 23, 2021. Claimant testified that he was

not available to work from June 17, 2021 and resumed searching for work on September 21, 2021.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant did participate in a reemployment services appointment. However, he is not able to and available for work beginning week ending June 20, 2021 through week ending September 18, 2021.

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.

The claimant in this matter did participate in a subsequent RESEA assessment during the day and time that he was requested to participate. Claimant is not disqualified from benefits due to his participation.

The next issue that must be determined is whether claimant is able to work and available for work, and did whether he make an earnest search for work. The administrative law judge finds the claimant is not able to work and available for work. Benefits are denied beginning June 20, 2021 through September 20, 2021.

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(1)a 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.

- (1) *Able to work.* An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.
  - a. *Illness, injury or pregnancy.* Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

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

Benefit 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(1) provides:

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

- (1) An individual who is ill and presently not able to perform work due to illness.

An individual claiming benefits has the burden of proof that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The claimant testified that he had open heart surgery and that he was in the hospital for a period of time and then he was recovering from his surgery and he was not able to work. Claimant testified that he had a subsequent surgery on August 23, 2021, and did not start applying for jobs again until September 21, 2021. The claimant argued that he should be entitled to benefits during this time period. However, the court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Empl. Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)). Claimant did not meet his burden of proof and he is not considered able to work and available for work. Accordingly, benefits are denied for the time period of June 20, 2021 through September 20, 2021.

**DECISION:**

The August 9, 2021, (reference 03) unemployment insurance decision is modified with no change in effect. The claimant did participate in the subsequent RESEA appointment, however, claimant is not able to and available for work from June 20, 2021 through September 20, 2021.



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Carly Smith  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau

October 13, 2021  
Decision Dated and Mailed

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