

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

MICHELLE A HACK
Claimant

APPEAL NO. 22A-UI-17194-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 05/15/22
Claimant: Appellant (2)**

Iowa Code Section 96.4(3) – Able & Available
Iowa Administrative Code rule 871-24.2(1)(e) – Failure to Appear As Directed

STATEMENT OF THE CASE:

On September 16, 2022, Michelle Hack (claimant) filed a timely appeal from the September 13, 2022 (reference 03) decision that denied benefits for the week that ended August 20, 2022, due to the claimant's report on her weekly claim that she was not able and/or not available for work. After due notice was issued, a hearing was held on October 13, 2022. Claimant participated. The hearing in this matter was consolidated with the hearing in Appeal Number 22A-UI-17194-JT-T. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, and the work search information the claimant entered on IowaWORKS.gov.

ISSUE:

Whether the claimant was able to work and available for work for the week ending August 20, 2022.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Michelle Hack (claimant) established an original claim for benefits that was effective May 15, 2022 and made weekly claims that included a claim for the week that ended August 20, 2022. The claimant made a mistake when she made her weekly claim and erroneously answered no to the question of whether she was able and available for work. On August 29, 2022, Iowa Workforce Development mailed a notice of fact-finding interview to the claimant's last-known address of record. In the notice, IWD directed the claimant to be available for a fact-finding interview call at 10:45 a.m. on September 6, 2022. The claimant received the notice in a timely manner. The purpose of the fact-finding interview was to address the claimant's weekly claim for the week ending August 20, 2022.

The claimant did not participate in the September 6, 2022 fact-finding interview call. The claimant advises that her mother was hospitalized from Thursday, September 1, 2022 until Wednesday morning, September 7, 2022. The claimant and her brother took turns at the hospital to be available for their mother and their mother's doctors. The claimant advises the

fact-finding interview appointment slipped from her mind while she was dealing with her mother's medical issues. At the time of the fact-finding interview, the Iowa Workforce Development deputy called the claimant's number. The claimant received a voicemail message regarding the fact-finding interview, but did not see or review it until September 8, 2022. At that time, the claimant attempted to return the call, but was unable to speak with an IWD representative.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4(3) provides as follows:

96.4 Required findings. An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. a. 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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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".

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. Iowa Administrative Code rule 871-24.2(1)(e). 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 Administrative Code rule 871-24.23(11).

The claimant failed to participate in the September 6, 2022 fact-finding interview due to extenuating circumstances pertaining to her mother's hospitalization. Under the circumstances, the claimant had good cause for not being available for the deputy's call on September 6, 2022. Despite the claimant's mother's hospitalization on Thursday, September 1, 2022, the claimant applied for four jobs during the week that ended September 10, 2022 and was available for work during the majority of that week. Likewise, the claimant applied for at four jobs during the week that ended September 17, 2022 and was available for work during the majority of that week. The claimant continued her active and earnest search for new employment during the week that ended September 24, 2022 and remained able to work and available for work during that week. No disqualification will enter in connection with the failure to appear on September 6, 2022. The claimant is eligible for benefits for the three weeks between September 4, 2022 and September 24, 2022, provided she meets all other eligibility requirements.

DECISION:

The September 13, 2022 (reference 04) decision is REVERSED. The claimant was able to work, available for work, and engaged in an active and earnest search for new employment during the three weeks between September 4, 2022 and September 24, 2022. The claimant had good cause for failing to participate in the September 6, 2022 fact-finding interview. No disqualification will enter in connection with the failure to appear on September 6, 2022. The claimant is eligible for benefits for the three weeks between September 4, 2022 and September 24, 2022, provided she meets all other eligibility requirements.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light-colored background.

James E. Timberland
Administrative Law Judge

October 17, 2022
Decision Dated and Mailed

jet/mh

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.