

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**NATHAN AUSTIN
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**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**Appeal Number: 04A-UI-10664-S2T
OC: 08/29/04 R: 02
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

871 IAC 24.2(1)e – Failure to Report as Directed
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Nathan Austin (claimant) appealed a representative's September 28, 2004 decision (reference 08) that concluded he had failed to be available as directed by Agency notice and was, therefore, not eligible to receive unemployment insurance benefits. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on October 28, 2004. The claimant did participate.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: The Agency mailed a notice to report to the claimant on September 15, 2004, which stated that the claimant's failure to participate in a telephone interview on September 23, 2004, would result in his disqualification for benefits. The claimant was not available. The claimant did not call the Agency immediately before or after the hearing indicating he would not be available for interview.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant failed to report as directed. For the following reasons the administrative law judge concludes he did not.

871 IAC 24.2(1)e provides:

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.

The method of reporting shall be weekly if a voice response continued claim is filed, unless otherwise directed by an authorized representative of the department. An individual who files a voice response continued claim will have the benefit payment automatically deposited weekly in the individual's financial institution's account or be paid by the mailing of a warrant on a biweekly basis.

In order for an individual to receive payment by direct deposit, the individual must provide the department with the appropriate bank routing code number and a checking or savings account number.

The department retains the ultimate authority to choose the method of reporting and payment.

The claimant was directed to be available for interview by the Agency on September 23, 2004. The claimant was not available. When a claimant does not report as directed, he will not be qualified to receive benefits. The claimant is not eligible to receive unemployment insurance benefits because he was not available for the Agency's interview.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be

credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received benefits in the amount of \$880.00 since filing his claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's September 28, 2004 decision (reference 08) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he did not respond to the Agency's notice to report. The claimant is overpaid benefits in the amount of \$880.00.

bas/kjf