

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JUSTIN M PORTH**  
Claimant

**APPEAL 19A-UI-02597-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 02/10/19  
Claimant: Appellant (4)**

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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:**

The claimant/appellant filed an appeal from the March 22, 2019, (reference 01), unemployment insurance decision that found claimant was not eligible for unemployment benefits because claimant failed to participate in reemployment services. The parties were properly notified of the hearing. A telephone hearing was held on April 17, 2019. The claimant participated personally. Bryan Anson, Workforce Advisor, participated on behalf of Iowa Workforce Development. Department Exhibit 1 was admitted into the record.

**ISSUES:**

Is the claimant available for work effective March 17, 2019?  
Did the claimant fail to report as directed by a department representative or offer justifiable cause for their failure to do so?  
Did the claimant fail to participate in a reemployment and eligibility assessment appointment as directed or offer justifiable cause for their failure to do so?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On March 8, 2019, a letter to report for a re-employment eligibility assessment appointment on March 20, 2019 at 11:00 a.m. Claimant received the letter prior to the scheduled appointment time and contacted Mr. Anson's voice mail prior to March 20, 2019. The claimant told Mr. Anson that he was in in-patient rehab and would not be able to attend the appointment. Claimant was in in-patient rehab from March 3, 2019 through April 1, 2019. Claimant chose not to leave rehab to attend his reemployment appointment.

On March 27, Mr. Anson spoke to the claimant and did not offer to reschedule his appointment at that time. The claimant specifically told Mr. Anson that he would be leaving rehab on April 1 or April 4, but Mr. Anson took no action to have the claimant's properly reported absence from his appointment on March 20 rescheduled.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did provide justifiable cause for failure to report as directed to participate in the re-employment and eligibility assessment appointment on March 20, 2019, but is not considered able to and available for work from March 1, 2019 through April 1, 2019.

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 § 96.4(7) provides:

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 Admin. Code r. 871-24.6 provides:

Profiling for reemployment services.

(1) The department of workforce development will provide a program which consists of profiling claimants and providing reemployment services.

(2) Profiling is a systematic procedure used to identify claimants who, because of certain characteristics, are determined to be permanently separated and most likely to exhaust benefits. Such claimants may be referred to reemployment services.

b. The eligibility assessment program is used to accelerate the individual's return to work and systematically review the individual's efforts toward the same goal.

(3) Reemployment services may include, but are not limited to, the following:

- a. An assessment of the claimant's aptitude, work history, and interest.
- b. Employment counseling regarding reemployment approaches and plans.
- c. Job search assistance and job placement services.
- d. Labor market information.
- e. Job search workshops or job clubs and referrals to employers.
- f. Résumé preparation.
- g. Other similar services.

(4) As part of the initial intake procedure, each claimant shall be required to provide the information necessary for profiling and evaluation of the likelihood of needing reemployment assistance.

(5) The referral of a claimant and the provision of reemployment services is subject to the availability of funding and limitations of the size of the classes.

(6) 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 to return to work, or both prior to the scheduled appointment or service.

This rule is intended to implement Iowa code section 96.4(7).

Iowa Admin. Code r. 871-24.2(1)e provides:

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

(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 Admin. Code r. 871-24.23(11) provides:

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

(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 Admin. Code r. 871-24.6(7) provides in pertinent part:

Eligibility assessment procedure.

- a. Before an individual has claimed five weeks of interstate benefits, the workforce development center shall receive a computer-selected list of individuals claiming benefits within the target population for review.
- b. No eligibility assessment will be performed on an individual unless monetary eligibility and none monetary eligibility are established.
- c. Once selected for an initial or subsequent eligibility assessment, claimants are required to participate in all components of the assessment as determined by the department.
- d. A Notice to Report shall be sent by the workforce development center to an individual who is in active status at the time of its printing. If the individual does not respond, the department must issue an appropriate failure to report decision and lock the claim to prevent payment.
- e. Selected claimants must report in person to the designated workforce development center to receive staff-assisted services for the initial assessment.
- f. Before an administrative law judge can rule on a disqualification for failure to report at an Iowa workforce development center as directed, there must be evidence to show that the individual was required to report for an interview.

If the department identifies a claimant who is likely to exhaust benefits, in order to be eligible for weekly benefits a claimant must report as directed to participate in reemployment services. Iowa Code § 96.4(7). Unemployment insurance rules require a claimant to 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. Iowa Admin. Code r. 871-24.6(6). 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. Iowa Admin. Code r. 871-24.6(6). Justifiable cause for failure to participate is defined as “an important and significant reason which a reasonable person would consider adequate justification in view of the paramount importance of reemployment to the claimant.” Iowa Admin. Code r. 871-24.6(6). The claimant shall contact the agency prior to the scheduled appointment or service to advise the department of the justifiable cause. Iowa Admin. Code r. 871-24.6(6). Failure to report or have justifiable cause for failing to report means the claimant has failed to meet the availability requirements of the law. Iowa Admin. Code r. 871-24.2(1)e and 871-24.23(11).

The claimant had justifiable cause for missing his March 20, 2019 re-employment and eligibility assessment appointment when he was undergoing in-patient rehab. The claimant reported to the agency that he would miss his appointment prior to the schedule time of the appointment. The claimant’s argument that he could have left rehab at any time and thus should be considered able to and available for unemployment insurance benefits is not credible. Claimant chose not to leave rehab to attend the assessment appointment. Claimant was limiting himself to rehab only during the entire time he was undergoing in-patient treatment. Claimant was not able to and available for work during the entire time he was undergoing in-patient rehab or from March 1 through April 1, 2019. On March 27, the claimant spoke to Mr. Anson, who at that time did not offer to reschedule the claimant for his appointment. The claimant was the one who sought out repeated contact with Mr. Anson. The claimant’s re-employment and eligibility assessment appointment shall be rescheduled for his appointment by Mr. Anson.

The claimant is not eligible to receive unemployment insurance benefits for the period from March 3 through April 1, 2019 as he was not able to and available for work as he was participating in in-patient rehab. Claimant’s participation in in-patient rehab is justifiable cause

for failing to participate in reemployment services, but being in rehab make him not able to and available for work. Claimant properly notified the agency that he would miss the appointment. Benefits are allowed effective April 2, 2019, provided the claimant is otherwise eligible.

**DECISION:**

The March 22, 2019, (reference 01) unemployment insurance decision is modified in favor of the claimant. The claimant has not failed to report for a reemployment and eligibility assessment appointment as directed. Claimant was not able to and available for work from March 1, 2019 through April 1, 2019 and benefits are denied for that time period. Benefits are allowed effective April 2, 2019, provided the claimant is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/rvs