

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
Division of Administrative Hearings  
Lucas State Office Building  
Des Moines, Iowa 50319

**Appeal Number:** 09-IWDUI-069  
**OC:** 07/06/08  
**Claimant:** Appellant (2)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**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.

**ASHLEY M JONES**  
**2804 HOLCOMB AVENUE**  
**DES MOINES IA 50310-0209**

STATE CLEARLY

**IOWA WORKFORCE DEVELOPMENT**  
**INVESTIGATION AND RECOVERY**  
**1000 EAST GRAND AVENUE**  
**DES MOINES IA 50319-0209**

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 the department. 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.

DAN ANDERSON, IWD

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(Administrative Law Judge)

April 27, 2009

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(Decision Dated & Mailed)

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Section 96.4-3 - Able and Available  
871 IAC 24.2(1)e – Failure to report

#### STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development Department decision dated March 27, 2009, reference 05, which held the claimant ineligible for benefits effective February 22, 2009, because she failed to report to a call-in notice for an interview.

The hearing was held pursuant to due notice on April 27, 2009, by telephone conference call. The claimant participated. Irma Lewis, Investigator, participated on behalf of Iowa Workforce Development. Claimant Exhibits A, B, C and D were received as evidence.

## FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having considered all of the evidence in the record, finds that: The claimant filed a claim for unemployment insurance benefits effective July 6, 200. The claimant last worked for Beachwood Entertainment. The claimant was not required to search for work as a condition of unemployment-benefit eligibility.

Beachwood complained to the department that the claimant was receiving unemployment benefits while working sometime in February 2009, and Investigator Lewis was assigned this matter. Lewis mailed a notice on February 13, 2009 to the claimant requesting that she report for an in-person interview on February 26. The stated reason for the inquiry was a routine audit of all work searches. Lewis did not provide the claimant a contact phone number to call regarding this matter.

Claimant received the notice, and questioned why the department was auditing her work search since she had no requirement to do so. Since the claimant had no phone number to call Lewis, she made a call to the department about the notice. Claimant was advised this must be a mistake, because she was not required to search for work. The claimant did not report for the interview.

The department mailed claimant a notice dated February 17 that her work search requirement had changed, and she was now required to search for work.

## REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is able and available for work.

### **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".

### **871 IAC 24.2 Procedures for workers desiring to file a claim for benefits for unemployment insurance provides:**

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 unemployment, an individual shall report as directed to do so by an authorized representative of the department.

The administrative law judge concludes that the claimant is NOT disqualified from receiving benefits

effective February 22, 2009, as she had a good cause for failing to report as directed by the department for an in-person interview pursuant to 871 IAC 24.2(1)e, and Iowa Code section 96.4-3. The claimant did respond to the notice to report, and called the department about it. Unfortunately, the notice did not provide Investigator's Lewis phone number, so she called and spoke with a department representative who was unaware of the circumstances. It is understandable that the claimant agreed with the department representative that this notice must be a mistake as she was not required to search for work until the department change notice dated February 17 that she had not received. Since the notice stated it was about her work search rather than an employer report she was working, she had no reason to believe that this was a misdirected request.

**DECISION:**

The decision of the representative dated March 27, 2009, reference 05, is REVERSED. The claimant is NOT disqualified from receiving benefits effective February 22, 2009, for failing to report for an in-person interview.

rls