

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

ROBERT A PHELPS
Claimant

APPEAL NO. 16A-UI-09930-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 08/14/16
Claimant: Appellant (2)

Iowa Code Section 96.4(3) – Able & Available
871 IAC 24.2(1)(e) – Failure to Report as Directed

STATEMENT OF THE CASE:

Robert Phelps filed a timely appeal from the September 8, 2016, reference 02, decision that denied benefits effective September 4, 2016, based on an agency conclusion that Mr. Phelps had failed to report as directed and, therefore, could not be deemed available for work. After due notice was issued, a hearing was held on September 27, 2016. Mr. Phelps participated. The hearing in this matter was consolidated with the hearing in Appeal Number 16A-UI-09929-JTT. Exhibit A was received into evidence. The administrative law judge took official notice of the following agency administrative records: DBRO, KCCO, KFFV and fact-finding notes concerning the September 7, 2016 fact-finding interview.

ISSUES:

Whether Mr. Phelps failed to report as directed.

Whether Mr. Phelps has been able to work and available for work since September 4, 2016.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Robert Phelps established an original claim for benefits that was effective August 14, 2016. On August 22, 2016, Mr. Phelps used the automated telephonic weekly claim reporting system to make his weekly claim for the week that ended August 20, 2016. Mr. Phelps responded appropriately to the prompts. Mr. Phelps reported that he was able to work, available for work and that he had made two employer contacts. Mr. Phelps had indeed made two employer contacts as part of his work search for that week.

On August 28, 2016, Mr. Phelps accessed the Iowa Workforce Development website to make his weekly claim for the week that ended August 27, 2016. Mr. Phelps encountered a message that indicated he had not made a claim for the week that ended August 20, 2016. So Mr. Phelps entered weekly claim information for the week that ended August 20, 2016. As part of this second weekly claim for the week that ended August 20, 2016, Mr. Phelps made an

error. Instead of clicking the box that said he was able to work and available for work, Mr. Phelps erroneously clicked the box that indicated he was not able to work and available for work. The erroneous report that Mr. Phelps was not able to work and available for work, prompted the Workforce Development computer system to flag Mr. Phelps' claim. However, Mr. Phelps did not receive an Unemployment Insurance Letter of Inquiry or notice of a fact-finding interview. Workforce Development records indicate that on September 1, 2016, the agency mailed notice of a fact-finding interview set for September 7, 2016 at 3:00 p.m. Mr. Phelps did not receive a telephone call from a Workforce Development representative or a voice mail message from a Workforce Development representative at or about the time of the scheduled fact-finding interview. Mr. Phelps was using a new phone and had not yet set up his voice mail.

Mr. Phelps' first notice that there was a problem with this claim was his receipt of the September 8, 2016, reference 01, decision that denied benefits for the week that ended August 20, 2016 and the September 8, 2016, reference 02, decision that denied benefits effective September 4, 2016, based on a purported failure to report as directed. It is the latter decision from which Mr. Phelps appeals in the present matter.

For each week since September 4, 2016, Mr. Phelps has been able to work, has been available for work, and has been engaged in an active and earnest search for new employment by making at least two employer contacts per week.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 and (2) 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.

(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.

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. See 871-24.2(1)(e).

The evidence in the record establishes that Mr. Phelps did not fail to report as directed. Mr. Phelps did not receive an Unemployment Insurance Letter of Inquiry. Mr. Phelps did not receive notice of a September 7, 2016 fact-finding interview. Mr. Phelps did not receive a message from a Workforce Development claims deputy on September 7, 2016. Since September 4, 2016, Mr. Phelps has otherwise demonstrated that he has been able to work, available for work, and actively and earnestly seeking new employment by making two job contacts per week. Effective September 4, 2016, Mr. Phelps is eligible for benefits, provided he meets all other eligibility requirements.

DECISION:

The September 8, 2016, reference 02, decision is reversed. The claimant did not fail to report as directed. Since September 4, 2016, the claimant has been able to work, available for work, and actively and earnestly seeking new employment. Effective September 4, 2016, the claimant is eligible for benefits, provided he meets all other eligibility requirements.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs