

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

Appeal Number: 05-IWDUI-0975
OC: 02/20/05
Claimant: Appellant (1)

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.

BEN BENNETT
23509 LAKESHORE DRIVE
BERNARD IA 52032

STATE CLEARLY

QUALITY CONTROL
IOWA WORKFORCE DEVELOPMENT
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

(Administrative Law Judge)

July 29, 2005

(Decision Dated & Mailed)

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 June 8, 2005, reference 01, which held the claimant ineligible for benefits effective May 29, 2005, because he failed to report to a call-in notice for an interview.

The hearing was held pursuant to due notice on July 21, 2005, by telephone conference call. The claimant did not participate. Richard Manchester, Auditor, participated on behalf of Quality Control, Iowa Workforce Development.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness, and having considered all of the evidence in the record, finds that: The claimant filed a claim for unemployment insurance benefits effective February 20, 2005. Quality Control randomly selected the claimant's claim for review.

QC Auditor Manchester mailed a notice to the claimant to his address of record dated May 25, 2005 requesting that he be available for a telephone interview on June 2. The claimant had provided a phone number to the department to be contacted for any matter. The notice contains a warning that a "failure to report for this interview will result in a denial of benefits and possible overpayment". The notice was mailed to the claimant's address of record, and it was not returned by the postal service.

Manchester called the number provided by the claimant on June 15 on two occasions with no response, and on the following day with no response. Manchester's phone number is listed on the notice. The department issued a decision that made the claimant ineligible for benefits for failing to be available for the interview.

The claimant received the disqualification decision and he called regarding the matter on June 10. A department representative provided the claimant with a fax number to contact Manchester.

The claimant did reach Manchester on June 13, and he agreed to an interview on June 14. Manchester learned the claimant was given a wrong number to contact him on June 10, so he backdated a department decision to lift the disqualification effective June 5, 2005.

The claimant failed to respond to the hearing notice.

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 disqualified for the one-week period ending June 4, 2005, for failing to report and be available as directed by the department for a telephone interview pursuant to 871 IAC 24.2(1)e, and Iowa Code section 96.4-3. The claimant corrected this matter by participating in a re-scheduled telephone interview, and the disqualification was limited to one-week, and the claimant was reinstated to benefit status effective June 5, 2005.

DECISION:

The decision of the representative dated June 8, 2005, reference 01, is **AFFIRMED**. The claimant is disqualified from receiving benefits for the one-week ending June 4, 2005, for failing to report and be available for a telephone interview. The department limited this disqualification to one-week, and made the claimant eligible for benefits effective June 5, 2005.

rls