

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ELISE BURGESS
Claimant

APPEAL 18A-UI-08353-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 06/10/18
Claimant: Appellant (4R)

Iowa Code § 96.4(3) - Able and Available
Iowa Admin. Code r. 871-24.2(1)e – Notice to Report
Iowa Admin. Code r. 871-24.23(11) – Failure to Report

STATEMENT OF THE CASE:

Elise Burgess (claimant) filed a timely appeal from the August 1, 2018, reference 01 unemployment insurance decision that denied benefits because of a failure to report as directed. After due notice was issued, a telephone conference hearing was set for August 27, 2018. The claimant participated. No exhibits were offered into the record.

ISSUE:

Did the claimant fail to report as directed or offer a good cause reason for failure to do so?

FINDINGS OF FACT:

Having heard the testimony and having examined the evidence in the record, the administrative law judge finds: The claimant filed a claim for benefits effective June 10, 2018. She is on a temporary layoff from her employer Mid-Iowa Community Action. The week ending July 21, 2018, the claimant reported that she refused work from her employer. On July 24, 2018, a notice was mailed to the claimant to be available for a call from Iowa Workforce Development (IWD) on July 31, 2018. She did not report because she did not read the notice that was sent to her. The claimant contacted IWD on August 6, 2018 about the situation, after receiving the unemployment insurance decision denying benefits.

The underlying issue of whether the claimant refused a suitable offer of work from Mid-Iowa Community Action during the week ending July 21, 2018 has not yet been investigated or adjudicated by the Benefits Bureau.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not able to and available for work for the two-week period ending August 11, 2018.

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 Code section 96.19(38) provides, in relevant part:

Definitions.

38. Total and partial unemployment

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

...

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

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 employer 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 in the individual's account at a financial institution or on a selected debit card.

(2) 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.

(3) 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.

The claimant started her layoff the week of June 10, 2018 and was partially unemployed through the week-ending July 7, 2018. Iowa Code § 96.19(38)c. As a result, she did not need to be able to and available for work. Iowa Code § 96.4(3). As of July 8, 2018, because it had been more than four weeks of consecutive layoff, the claimant needed to be able to and available for work to maintain eligibility for unemployment insurance benefits. The claimant received the notice for the fact-finding interview but did not read it. Additionally, she was not available when called for the fact-finding interview on July 31, 2018. She did not make herself available until August 6, 2018, when she contacted IWD. Failure to read and follow the instructions on the notice does not constitute good cause for the claimant's failure to respond. The claimant was not able to and available for work for the two-week period ending August 11, 2018.

The underlying issue of whether the claimant refused a suitable offer of work from Mid-Iowa Community Action during the week ending July 21, 2018, is remanded to the Benefits Bureau of IWD for an initial investigation and determination.

DECISION:

The August 1, 2018, reference 01, unemployment insurance decision is modified in favor of the claimant. The claimant was not able to and available for work for the two-week period ending August 11, 2018 and benefits are denied. Benefits are allowed effective August 12, 2018, provided the claimant is otherwise eligible.

REMAND:

The underlying issue of whether the claimant refused a suitable offer of work from Mid-Iowa Community Action during the week ending July 21, 2018, is remanded to the Benefits Bureau of IWD for an initial investigation and determination.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn