

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

JESSE A BARNETT
Claimant

APPEAL NO. 23A-UI-04544-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 04/02/23
Claimant: Appellant (5)**

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

STATEMENT OF THE CASE:

On May 2, 2023, Jesse Barnett (claimant) filed a timely appeal from the April 28, 2023 (reference 06) decision that denied benefits effective April 23, 2023, based on the deputy's determination the claimant failed to report as directed by Iowa Workforce Development and therefore did not meet the availability requirements. After due notice was issued, a hearing was held on May 18, 2023. Claimant participated. The hearing in this matter was consolidated with the hearing in Appeal Number 23A-UI-04543-JT-T. Exhibits A and B, the two online appeals, were received into evidence. The administrative law judge took official notice of the following Iowa Workforce Development administrative records: KCCO, DBRO, KFFV and www.iowaWORKS.gov.

ISSUE:

Whether the claimant failed to report as directed by Iowa Workforce Development for a meeting and therefore did not meet the availability requirements effective April 23, 2023.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Jesse Barnett (claimant) established an original claim for benefits that was effective April 2, 2023.

The claimant made multiple errors in connection with making his weekly claim for the week ending April 15, 2023. The claimant entered his work search information into the iowaWORKS.gov database, but failed to certify the accuracy of that information via the iowaWORKS.gov database after the week had ended and before he made his weekly claim. When the claimant used the Iowa Workforce Development weekly claim reporting system to make his weekly claim, he erroneously marked a no response to the question of whether he was able and available to work during the week that ended April 15, 2023. Because the claimant had not certified his job applications via www.iowaWORKS.gov prior to making the weekly claim, the weekly claim reporting system erroneously documented the claimant's employer contacts as zero, rather than four.

The claimant's indication in the weekly claim that he was not able and/or not available for work during the week that ended April 15, 2023 prompted Iowa Workforce Development to schedule a single-party fact-finding interview for 8:30 a.m. on April 26, 2023. IWD mailed notice of the fact-finding interview to the claimant on April 20, 2023. The claimant received the notice in a timely manner. The IWD deputy attempted to reach the claimant at his phone number of record at the time of the interview. The claimant did not answer the call. When the claimant did not answer, the IWD deputy left a voicemail message requesting a return call within 30 minutes and stating the claimant's right to appeal the decision that would follow. The claimant missed the deputy's call because he misremembered the date of the scheduled fact-finding interview. The claimant listened to the deputy's voicemail message, but did not do so until 11:30 a.m. to 12:00 p.m. on April 26, 2023. The claimant did not attempt late return of the deputy's call and instead filed an appeal on May 2, 2023.

During the week that ended April 29, 2023, the claimant applied for four jobs. The claimant was physical and mentally able to work that week. Aside from the claimant's failure to appear for the fact-finding interview as directed, the claimant was otherwise available for work and engaged in a search for new employment.

On May 3, 2023, the claimant accepted new employment scheduled to start on May 8, 2023. In light of his acceptance of new employment, the claimant elected to discontinue his weekly claims after he made his claim for the week that ended April 29, 2023.

The availability issue that that April 26, 2023 fact-finding interview was scheduled to address, was initially adjudicated in April 28, 2023 (reference 05) decision that denied benefits for the week ending April 15, 2023. The claimant appealed the reference 05 decision. The reference 05 decision was reversed in Appeal Number 23A-UI-04543-JT-T.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4(3)(a) provides:

96.4 Required findings. An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. a. 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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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(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.

(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. Iowa Administrative Code rule 871-24.2(1)(e). 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 Administrative Code rule 871-24.23(11).

The claimant received appropriate notice of the April 26, 2023 fact-finding interview, but failed to participate in the fact-finding interview as directed by Iowa Workforce Development. The claimant did not have good cause for failing to report as directed by Iowa Workforce Development. Based on the failure to report as directed, the claimant did not meet the availability requirements during the week that ended April 29, 2023 and is not eligible for benefits for that week. Because the claimant discontinued his claim for benefits after the week that ended April 29, 2023, and because the claimant participated in the appeal hearing that addressed the weekly claim for the week ending April 15, 2023, the failure-to-report disqualification is limited to the week that ended April 29, 2023.

DECISION:

The April 28, 2023 (reference 06) decision is MODIFIED only as to the duration of the failure-to-report disqualification. The claimant failed to report as directed for an April 26, 2023 single-party fact-finding interview without good cause. For that reason, the claimant did not meet the availability requirements during the week that ended April 29, 2023 and is not eligible for benefits for that week. The failure-to-report disqualification is limited to the week that ended April 29, 2023.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light-colored background.

James E. Timberland
Administrative Law Judge

May 31, 2023
Decision Dated and Mailed

jet/mh

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.