

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KEVIN L JOHNSON**  
Claimant

**APPEAL NO. 16A-UI-06360-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT**

**OC: 12/20/15**  
**Claimant: Appellant (4)**

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

**STATEMENT OF THE CASE:**

Kevin Johnson filed a timely appeal from the June 6, 2016, reference 12, decision that denied benefits effective May 29, 2016, based on an Agency conclusion that he had failed to report as directed in response to an Unemployment Insurance Letter of Inquiry and, therefore, could not be deemed available for work. After due notice was issued, a hearing was held on July 11, 2016. Mr. Johnson participated. The hearing in this was consolidated with the hearings in Appeal Numbers 16A-UI-06357-JTT, 16A-UI-06358-JTT, and 16A-UI-06359-JTT. Exhibits A through D were received into evidence. Department Exhibits D-1 through D-4 were received into evidence.

**ISSUES:**

Whether the claimant failed to report as directed in response to the Unemployment Insurance Letter of Inquiry that was mailed to him on May 19, 2016.

Whether the claimant has been able to work and available for work since May 29, 2016.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On May 19, 2016, Iowa Workforce Development mailed an Unemployment Insurance Letter of Inquiry to Kevin Johnson at his last-known address of record. The Letter of Inquiry sought additional information concerning Mr. Johnson's unemployment insurance claim for the week that ended May 7, 2016. Mr. Johnson was in the hospital during a one day of that week and reported only on employer job contact for that week. The Letter of Inquiry directed Mr. Johnson to respond by May 31, 2016. The Letter of Inquiry warned that a failure to respond by the May 31, 2016, would request in Mr. Johnson being disqualified for benefits already paid and/or for future benefits. Mr. Johnson received the Letter of Inquiry, but elected not to respond to it.

On June 6, 2016, Workforce Development mailed a copy of the June 6, 2016, reference 12, decision to Mr. Johnson's last known address of record. The decision disqualified Mr. Johnson for benefits effective May 29, 2016, due to the failure to respond. On June 7, 2016, Mr. Johnson filed an appeal in response to the reference 12 decision and three other decisions.

During the weeks that ended June 4, 11, 18, 25, and July 2, 2016, Mr. Johnson made two employer job contacts.

## **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".

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. 871 IAC 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. 871 IAC 24.23(11).

Mr. Johnson received the May 19, 2016 Unemployment Insurance Letter of Inquiry regarding his weekly claim for the week that ended May 7, 2016. Mr. Johnson elected not to respond to the Letter of Inquiry and, thereby, failed to report as directed. The failure to report as directed prevented Mr. Johnson from meeting the work availability requirement effective May 29, 2016. Though Mr. Johnson did not respond directly to the Letter of Inquiry, the denial of benefits prompted Mr. Johnson to file an appeal on June 7, 2016. The appeal constituted a belated response to the Letter of Inquiry, thus the disqualification that was effective May 29, 2016 was effective only for that week. Accordingly, Mr. Johnson is not eligible for benefits for the week that ended June 4, 2016.

The weight of the evidence indicates that Mr. Johnson has been able to work, available for work, and actively and earnestly seeking new employment since the benefit week of June 5 through 11, 2016. Effective June 5, 2016, Mr. Johnson is eligible for benefits, provided he meets all other eligibility requirements.

The administrative law judge notes The March 18, 2016, reference 02, decision that disqualified Mr. Johnson for benefits in connection with a February 15, 2016 disciplinary suspension from Nestle USA, Inc. The administrative law judge also notes the administrative law judge decision in Appeal Number 16A-UI-04849-DL-T, which decision affirmed the reference 02 decision and disqualification. Nothing about the present decision or the decisions entered the companion cases disturbs the March 18, 2016, reference 02, decision or the administrative law judge decision in Appeal Number 16A-UI-04849-DL-T.

**DECISION:**

The June 6, 2016, reference 12, decision is modified as follows. The claimant failed to report as directed in response to the Unemployment Insurance Letter of Inquiry that was mailed to the claimant on May 19, 2016. Based on the failure to report as directed, the claimant did not meet the availability requirement effective May 29, 2016 and was not eligible for benefits for the week that ended June 4, 2016. The claimant was able to work and available for work during the period of June 5, 2016 through July 2, 2016. The claimant would be eligible for benefits for those weeks so long as he meets all the other eligibility requirements.

The administrative law judge notes the two decisions mentioned above that disqualified the claimant for benefits in connection with his separation from Nestle USA, Inc. The present decision does nothing to disturb those two decisions that disqualified the claimant for benefits in connection with his separation from Nestle USA, Inc.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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