

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SIMON G THOMAS
Claimant

APPEAL 17A-UI-09059-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 05/14/17
Claimant: APPELLANT (3)**

Iowa Code § 96.4(3) – Available for work
Iowa Code § 96.4(7) – Reemployment services
Iowa Admin. Code r. 871-24.6 – Profiling for reemployment services
Iowa Admin. Code r. 871-24.2(1)e – Procedures for workers desiring to file a claim for benefits
Iowa Admin. Code r. 871-24.23 (11) – Failure to Report
Iowa Admin. Code r. 871-24.11 – Eligibility review program

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the August 23, 2017, (reference 03) unemployment insurance decision that found claimant was not eligible for unemployment benefits because claimant failed to participate in reemployment services. The parties were properly notified of the hearing. A telephone hearing was held on September 25, 2017. The claimant, Simon G. Thomas, participated personally. Joel Thompson, Workforce Advisor participated on behalf of Iowa Workforce Development. Department Exhibits 1 through 4 were admitted into the record.

ISSUES:

Is the claimant available for work effective June 30, 2017?

Did the claimant fail to report as directed by a department representative or offer justifiable cause for their failure to do so?

Did the claimant fail to participate in a reemployment and eligibility assessment appointment as directed or offer justifiable cause for their failure to do so?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed a claim for unemployment insurance benefits with an effective date of May 14, 2017. Claimant was selected to participate in the reemployment services program. A notice was mailed to the claimant on June 13, 2017, notifying him of his appointment for re-employment assessment appointment on June 30, 2017. The claimant received the notice. The claimant called the number listed on the notice to say he could not attend the appointment because he was providing day care services for his five year old granddaughter during the summer while his wife and daughter both worked. The claimant spoke to an unknown IWD worker and asked to reschedule his appointment. The claimant was expecting a new appointment letter to come in the mail so he did not contact the agency again until after he received the decision denying benefits and the decision finding him overpaid unemployment insurance benefits. After receiving the decision denying benefits and finding him overpaid

unemployment insurance benefits, the claimant attended and completed the required re-employment services program on September 7, 2017. The claimant's claim was unlocked effective September 3, 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did provide justifiable cause for failure to report as directed to participate in the reemployment and eligibility assessment appointment, but was not able to and available for work from June 30, 2017 through August 26, 2017.

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".

While the claimant may have provided justifiable cause for failing to attend the appointment because he was providing day care for his granddaughter; he cannot be considered able to and available for work during the period he was providing day care for his granddaughter. The claimant was not going to accept a job with daytime work hours while he was providing day care. His granddaughter has returned to school and the claimant is now able to and available for work for the period beginning August 27, 2017 when school started. The claimant is not able to and available for work effective June 30, 2017 through August 26, 2017.

Iowa Code § 96.4(7) provides:

Required findings.

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

(7) The individual participates in reemployment services as directed by the department pursuant to a profiling system, established by the department, which identifies individuals who are likely to exhaust benefits and be in need of reemployment services.

Iowa Admin. Code r. 871-24.6 provides:

Profiling for reemployment services.

(1) The department of workforce development and the department of economic development will jointly provide a program which consists of profiling claimants and providing reemployment services.

(2) Profiling is a systematic procedure used to identify claimants who, because of certain characteristics, are determined to be permanently separated and most likely to exhaust benefits. Such claimants may be referred to reemployment services.

(3) Reemployment services may include, but are not limited to, the following:

- a. An assessment of the claimant's aptitude, work history, and interest.
- b. Employment counseling regarding reemployment approaches and plans.
- c. Job search assistance and job placement services.
- d. Labor market information.
- e. Job search workshops or job clubs and referrals to employers.
- f. Résumé preparation.
- g. Other similar services.

(4) As part of the initial intake procedure, each claimant shall be required to provide the information necessary for profiling and evaluation of the likelihood of needing reemployment assistance.

(5) The referral of a claimant and the provision of reemployment services is subject to the availability of funding and limitations of the size of the classes.

(6) A claimant shall participate in reemployment services when referred by the department unless the claimant establishes justifiable cause for failure to participate or the claimant has previously completed such training or services. Failure by the claimant to participate without justifiable cause shall disqualify the claimant from the receipt of benefits until the claimant participates in the reemployment services.

a. Justifiable cause for failure to participate is an important and significant reason which a reasonable person would consider adequate justification in view of the paramount importance of reemployment to the claimant.

This rule is intended to implement Iowa code section 96.4(7).

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 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 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.

The method of reporting shall be weekly if a voice response continued claim is filed, unless otherwise directed by an authorized representative of the department. An individual who files a voice response continued claim will have the benefit payment automatically deposited weekly in the individual's account at a financial institution or be paid by the mailing of a warrant on a biweekly basis.

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. 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.

Iowa Admin. Code r. 871-24.11 provides in pertinent part:

Eligibility review program.

(1) Purpose. The eligibility review program is used to accelerate the individual's return to work and systematically review the individual's efforts toward the same goal.

(2) Individuals requiring an eligibility review.

a. Selected individuals claiming intrastate benefits and interstate benefits shall be required to complete the eligibility review Form 60-0232 at times determined by the department after they have filed an initial or additional claim.

(4) Eligibility review procedure.

a. After an individual has claimed a number of weeks of intrastate benefits as designated by the department, the workforce development center shall receive a computer selected list of individuals claiming benefits. The list shall be retained in the workforce development center so work search assistance and reemployment services can be provided as needed by the claimant.

b. No eligibility review will be performed on an individual unless monetary and nonmonetary eligibility are established.

c. An Eligibility Review Questionnaire shall be mailed or provided to the individual.

d. A copy of the Eligibility Review Questionnaire shall be sent to the workforce development center only on an individual who is in an active status at the time of its printing. If the individual fails to respond to the Eligibility Review Questionnaire within the designated period of time printed on the questionnaire, the workforce development center shall issue a Form 60-0131, Notice to Report. If the individual does not respond after this action has been taken, the department must issue an appropriate failure to report decision and lock the claim to prevent payment.

e. In cases of illness, injury or pregnancy, an unemployment insurance representative shall determine when and if a personal appearance shall be conducted. The representative shall be responsible for determining continuing eligibility or noneligibility of the individual based on the information obtained on the Form 60-0141, Request for Medical Report, or the facts presented during the interview. If the representative believes an additional Form 60-0141 may be needed, the representative shall initiate the request in the regular manner. Special attention shall be given to work search, i.e., number of contacts, types of contacts and the available job market information.

f. Before an administrative law judge can rule on a disqualification for failure to report at an Iowa workforce development center as directed, there must be evidence to show that the individual was required to report for an interview.

If the department identifies a claimant who is likely to exhaust benefits, in order to be eligible for weekly benefits a claimant must report as directed to participate in reemployment services. Iowa Code § 96.4(7). Unemployment insurance rules require a claimant to participate in reemployment services when referred by the department unless the claimant establishes justifiable cause for failure to participate or the claimant has previously completed such training or services. Iowa Admin. Code r. 871-24.6(6). Failure by the claimant to participate without justifiable cause shall disqualify the claimant from the receipt of benefits until the claimant participates in the reemployment services. Iowa Admin. Code r. 871-24.6(6). Justifiable cause for failure to participate is defined as “an important and significant reason which a reasonable person would consider adequate justification in view of the paramount importance of reemployment to the claimant.” Iowa Admin. Code r. 871-24.6(6). Failure to report or have justifiable cause for failing to report means the claimant has failed to meet the availability requirements of the law. Iowa Admin. Code r. 871-24.2(1)e and 871-24.23(11).

While providing day care for his granddaughter may be a good reason to miss the appointment, it also renders the claimant not able to and available for work. The claimant is not eligible for benefits from June 30, 2017 through August 26, 2017 as he was not able to and available for work. The claimant has now participated in reemployment services as required. The claimant is eligible to receive unemployment insurance benefits for the week-ending September 2, 2017 because he did have justifiable cause for failing to participate in reemployment services. Benefits are allowed effective August 27, 2017.

DECISION:

The August 23, 2017, (reference 03) unemployment insurance decision is modified in favor of the respondent. The claimant has not failed to report for a reemployment and eligibility assessment appointment as directed. However, the claimant is not considered able to and available for work for the period from June 30, 2017 through August 26, 2017. Benefits are allowed effective August 27, 2017.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs