

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

Appeal Number: 09-IWDUI-161
OC: 04/05/09
Claimant: Appellant (2)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

JOHN J. ANDERSON
812 BROADWAY ST.
WATERLOO, IA 50703-5814

IOWA WORKFORCE DEVELOPMENT
QUALITY CONTROL
MICHELLE ANDRE & GERI LAINSON
1000 EAST GRAND AVENUE
DES MOINES IA 50319-0209

DAN ANDERSON, IWD

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.

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.

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.

(Administrative Law Judge)

August 18, 2009
(Dated and Mailed)

Iowa Code section 96.4-3 – Available to work
871 Iowa Administrative Code 24.2(1)(e) – Requirement to report

STATEMENT OF THE CASE

John Anderson filed an appeal from a decision issued by Iowa Workforce Development (the Department) dated July 10, 2009, reference 3, holding he was disqualified from receiving unemployment insurance benefits effective July 5, 2009 because he failed to report for an interview with a quality control auditor.

The case was transmitted from Workforce Development to the Department of

Inspections and Appeals on July 30, 2009 for scheduling of a contested case hearing. On July 31, 2009, a Notice of Telephone Hearing was mailed to Mr. Anderson and the Investigations and Recovery Unit of Workforce Development. On August 4, 2009, a Corrected Notice of Telephone Hearing was mailed to Mr. Anderson and the Quality Control Unit of Workforce Development.

The hearing was held by telephone conference call before Administrative Law Judge Kerry Anderson on August 17, 2009... Appellant John Anderson failed to appear. James Van Syok appeared and participated on behalf of Workforce Development. Official notice was taken of the contents of the administrative file.

ISSUE

Whether the Department correctly determined that the claimant was ineligible for benefits based on failure to report for an interview with a quality control auditor.

FINDINGS OF FACT

On June 29, 2009, the Department sent John Anderson a *Notice of Selection of Telephone Interview*, stating that his unemployment benefits claim had been randomly selected for an audit. Mr. Anderson was informed that Geri Lainson, a Quality Control Auditor with the department would telephone him at a number set out in the notice at 9:00 a.m. on July 9, 2009. The notice also contained the following statement:

**FAILURE TO REPORT FOR THIS INTERVIEW WILL RESULT
IN A DENIAL OF BENEFITS AND POSSIBLE OVERPAYMENT.**

(Notice of Selection Of Telephone Interview) (Emphasis in original).

On July 9, 2009, Ms. Lainson telephoned the number set out on the notice and reached an answering machine. She left a message requesting that Mr. Anderson telephone her by noon that day or she would “lock” claim until he submitted to an interview. She did not receive a telephone call from Mr. Anderson by 12:30 p.m. that day and, as a result, Ms. Lainson locked the claim.

On July 10, 2009, the department sent Mr. Anderson a decision holding he was ineligible to receive unemployment insurance benefits based on his failure to submit for the interview. The decision held that Mr. Anderson would be denied benefits effective July 5, 2009 until such time as he did meet with an auditor.

Mr. Anderson did eventually appear and participate in a quality control interview on July 15, 2009. The department then removed his disqualification from benefits effective July 12, 2009. Therefore, this case involves only one week of disqualification.

REASONING AND CONCLUSIONS OF LAW

Iowa law requires that an individual must be able to and available for work and must be actively seeking employment in order to be eligible for unemployment compensation benefits.¹ Iowa Workforce Development's decision has promulgated rules further elucidating this requirement. The Department's regulations provide that in order to maintain continuing eligibility for benefits, a claimant shall report as directed to do so by an authorized representative of the Department.² That rule also states that the method of reporting will be weekly if a voice response continued claim is filed, unless otherwise directed by an authorized representative of the department.³ The purpose of this rule is clearly to ensure that the able, available and actively seeking work criteria are met.

The request to report in this case does not involve the weekly reporting referred to in the rule relied upon by the department. The requested reporting in this case is for the stated purpose of "obtain[ing] statistical information and ... test[ing] operational features of the Unemployment Insurance Program."⁴ Under these circumstances, it cannot be held that the reporting rule on which the department relies is applicable.

It would make sense that the department should have a rule allowing it to disqualify an individual from benefits in the event of non-cooperation. The department is certainly empowered to adopt such a regulation.⁵ However, the rule relied upon by the department in this case is not does not apply to the facts presented in this case and its decision disqualifying Mr. Anderson from benefits must therefore be reversed.

DECISION AND ORDER

The department's decision dated July 10, 2009 disqualifying Mr. Anderson from receiving benefits on the basis of failure to appear for a quality control audit is **REVERSED**. The Department shall take any actions necessary to implement this decision.

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¹ Iowa Code section 96.4(3).

² 871 Iowa Administrative Code (IAC) 24.2(1)(e).

³ *Id.*

⁴ *Notice of Selection of Telephone Interview*

⁵ Iowa Code section 96.11(1).