

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL A MCNEIL
Claimant

APPEAL NO. 16A-UI-07006-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 05/15/16
Claimant: Appellant (3)

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

STATEMENT OF THE CASE:

Michael McNeil filed a timely appeal from the June 14, 2016, reference 02, decision that denied benefits effective June 5, 2016, based on an agency conclusion that Mr. McNeil had failed to report as directed in response to an Unemployment Insurance Letter of Inquiry. The appeal hearing was scheduled for July 13, 2016 and notice of the hearing was mailed to Mr. McNeil on June 28, 2016. The hearing took place one day early on July 12, 2016 by agreement between the administrative law judge and Mr. McNeil to avoid a delayed hearing on July 13, 2016. Mr. McNeil participated. Exhibits A and B were received into evidence. The administrative law judge took official notice of the following agency administrative records: DBRO, KCCO and KLOG.

ISSUES:

Whether the claimant failed to report to Iowa Workforce Development as directed in response to the Unemployment Insurance Letter of Inquiry that was mailed to him on May 25, 2016 with a June 6, 2016 response due date.

Whether the claimant has been able to work and available for work within the meaning of the law since he established the original claim that was effective May 15, 2016.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Michael McNeil is employed by Flexsteel Industries, Inc., on a full-time basis. He started with the employer in July 2015. The employer temporarily laid off Mr. McNeil for the week of May 15-21, 2016. During that week, Mr. McNeil established an original claim for unemployment insurance benefits that was deemed effective May 15, 2016. At the time Mr. McNeil completed his online application for benefits, he erroneously indicated that he was receiving a pension. Mr. McNeil misinterpreted the question as asking whether the employer offered a pension benefit. Mr. McNeil was not and is not receiving a pension. During the week of May 15, 2016,

Mr. McNeil telephoned Iowa Workforce Development and spoke to a Workforce Development representative. At the time of that contact, the Workforce Development representative reminded Mr. McNeil that he would have to make weekly claims in order to receive unemployment insurance benefits. The representative also provided Mr. McNeil with the phone number to use to make weekly claims. Mr. McNeil did not make a weekly claim for the week that ended May 21, 2016. On May 23, 2016, Mr. McNeil returned to his full-time employment.

On May 25, 2016, Iowa Workforce Development mailed an Unemployment Insurance Letter of Inquiry in an attempt to obtain more information about the pension payment issue. The Letter of Inquiry directed Mr. McNeil to return the letter by June 6, 2016 and warned that, "Failure to return this letter by the required date will result in disqualification of benefits already paid and /or future benefits. The disqualification will remain until you provide the required information." Mr. McNeil received the Letter of Inquiry in a timely manner, prior to the response deadline, but elected not to respond to the document. In the absence of a response from Mr. McNeil, on June 14, 2016, Iowa Workforce Development mailed the reference 02 decision that denied benefits effective June 5, 2016, based on a conclusion that Mr. McNeil had failed to report as directed and, therefore, did not meet the availability requirement.

The employer subsequently temporarily laid off Mr. McNeil for the week of June 19-25, 2016. During the week of June 12-18, 2016, Mr. McNeil established an additional claim for benefits that was deemed effective June 12, 2016. Though Mr. McNeil took steps to reactive the underlying claim, he did not make a weekly claim for the week that ended June 25, 2016. Mr. McNeil returned to the full-time employment on June 27, 2016.

On June 23, 2016, Mr. McNeil filed his appeal from the June 14, 2016 reference 02 decision. Mr. McNeil included a copy of the May 25, 2016 Unemployment Insurance Letter of Inquiry in his appeal materials. On June 23, 2016, Mr. McNeil signed the letter and put a mark next to a box on the form to indicate that he was not receiving payment from a pension.

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).

The evidence in the record establishes that Mr. McNeil did indeed fail to report as directed by failing to provide a timely response to the May 25, 2016 Unemployment Insurance Letter of Inquiry. Mr. McNeil had received the letter in a timely manner and elected not to respond to the letter by the June 6, 2016 deadline. Based on the failure to report as directed, Mr. McNeil did not meet the availability requirement effective June 5, 2016. Based on the failure to report as directed, Mr. McNeil continued not to meet the availability requirement until he returned the Letter of Inquiry to Workforce Development as part of his June 23, 2016 appeal packet. Because the response came during the week that started June 19, 2016, the availability disqualification that was based on the failure to report was lifted as of June 19, 2016. However, there were other availability issues.

Iowa Administrative Code section 871-24.2(1)(e) and (g) provide as follows:

Procedures for workers desiring to file a claim for benefits for unemployment insurance.

24.2(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.

g. No continued claim for benefits shall be allowed until the individual claiming benefits has completed a voice response continued claim or claimed benefits as otherwise directed by the department. The weekly voice response continued claim shall be transmitted not earlier than noon of the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on the Friday following the weekly reporting period.

An individual claiming benefits using the weekly voice continued claim system shall personally answer and record such claim on the system unless the individual is disabled and has received prior approval from the department.

The individual shall set forth the following:

- (1) That the individual continues the claim for benefits;
- (2) That except as otherwise indicated, during the period covered by the claim the individual was unemployed, earned no wages and received no benefits, was able to work and available for work;
- (3) That the individual indicates the number of employers contacted for work;
- (4) That the individual knows the law provides penalties for false statements in connection with the claim;
- (5) That the individual has reported any job offer received during the period covered by the claim;
- (6) Other information required by the department.

Because Mr. McNeil did not make weekly claims for the week that ended May 21, 2016 or the week that ended June 25, 2016, he is not eligible for benefits for either week. Mr. McNeil is not eligible for benefits for other weeks since May 15, 2016 because he has been working full-time for the employer and, therefore, would not meet the availability requirement. See Iowa Administrative Code rule 871 IAC 24.23(23).

DECISION:

The June 14, 2016, reference 02, decision is modified as follows. The claimant failure to report as directed in response to the May 25, 2016 Unemployment Insurance Letter of Inquiry that carried a June 6, 2016 response due date. Based on the failure to report as directed, the claimant did not meet the availability requirement for the period of June 5, 2016 through June 18, 2016. The claimant reported on June 23, 2016. Accordingly, the availability disqualification that was based on the failure to report was lifted as of June 19, 2016, the start of the week during which the claimant reported. The claimant did not make weekly claims for the weeks that ended May 21, 2016 and June 25, 2016, the weeks during which he was on temporary layoff. Based on the failure to make weekly claims for those weeks, the claimant did not meet the availability requirement and is not eligible for benefits for those weeks. The claimant did not meet the availability requirement during the other weeks since the May 15, 2016 original claim date because he was working full-time for the employer. In summary, the claimant did not satisfy the availability requirements during the period of May 15, 2016 through the benefit week that ended July 9, 2016 and is not eligible for benefits of any of those weeks.

If the claimant wishes to be eligible for benefits in connection with future layoffs, the claimant must establish or reactivate an underlying claim and follow that up with timely weekly claims. The claimant should carefully read any correspondence from Workforce Development and provide a timely response when requested.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs