

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHANE A ZEITLER
Claimant

APPEAL 19A-UI-08628-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWAWORKS

**OC: 08/04/19
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Shane Zeitler filed a timely appeal from the October 25, 2019 (reference 07) decision that denied benefits effective October 20, 2019, based on the Agency representative's conclusion that Mr. Zeitler failed to report as directed for an October 24, 2019 reemployment and eligibility assessment and therefore did not meet the availability requirements. After due notice, an appeal hearing was held on December 3, 2019. Mr. Zeitler participated. Becky Goodier, Iowa Workforce Development RESEA Career Planner, also participated. Exhibits 1 through 5 and Exhibit A were received into evidence. The administrative law judge took official notice of the Agency's administrative record of Mr. Zeitler's weekly claims (KCCO).

ISSUES:

Whether the claimant has been available for work within the meaning of the law since October 20, 2019.

Whether the claimant failed to report as directed by a department representative to participate in an October 24, 2019 reemployment services appointment without justifiable cause for his failure to appear.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Shane Zeitler established an original claim for benefits that was effective August 4, 2019. Mr. Zeitler made weekly claims for the weeks that ended August 10 and 17, 2019. Mr. Zeitler later reactivated the claim and made weekly claims for the 13 weeks between September 1, 2019 and November 30, 2019. Mr. Zeitler was selected to participate in a reemployment services appointment at 9:00 a.m. on September 26, 2019 at the Fort Dodge IowaWORKS center. The Agency mailed notice of the appointment to Mr. Zeitler's last known of address of record on September 13, 2019. Mr. Zeitler had relocated from Fort Dodge to Estherville and provided

Workforce Development with an address in Estherville. Iowa Workforce Development mailed the notice to the address of record in Estherville. Mr. Zeitler did not receive the notice and did not appear for the September 26, 2019 meeting. When Mr. Zeitler did not appear for the September 26, 2019 meeting, a Workforce Advisor in Fort Dodge locked Mr. Zeitler's claim. On October 3, 2019, Mr. Zeitler contacted the Workforce Advisor in Fort Dodge to learn why his claim had been locked. At that time, the Agency unlocked the claim and referred the Re-Employment Services and Eligibility Assessment matter to Beck Goodier, RESEA Career Planner. Ms. Goodier works at the Sioux City IowaWORKS, but also performs work at the Spencer IowaWORKS.

On October 14, 2019, Mr. Zeitler called Ms. Goodier to reschedule the Re-Employment Services and Eligibility Assessment appointment. Ms. Goodier rescheduled the RESEA appointment to 1:00 p.m. on October 24, 2019 at the Spencer IowaWORKS. During the October 14, 2019, telephone call, Mr. Zeitler confirmed his availability for the October 24 appointment and confirmed his ability to secure transportation to the appointment. The distance from Estherville to Spencer is about 34 miles. Mr. Zeitler lacks driving privileges and was dependent on his girlfriend's relatives for transportation once he moved to the Estherville area.

On October 15, 2019, Iowa Workforce Development mailed formal notice to Mr. Zeitler concerning the October 24, 2019 RESEA meeting. The notice provided the date, time and location of the meeting. The notice stated: "Failure to report for your meeting at the above date, time, and location will result in denial of unemployment benefits." The notice included Ms. Goodier's phone number and extension. Mr. Zeitler received the notice on October 17 or 18, 2019, but did not read the notice beyond noting the date, time and location of the RESEA meeting.

On October 17, 2019, an IowaWORKS representative attempted to call Mr. Zeitler for the purpose of reminding him that he needed to appear for the October 24 meeting, but Mr. Zeitler's phone number of record was not in service.

Mr. Zeitler did not take appropriate steps to secure transportation to the RESEA meeting in Spencer. Mr. Zeitler spent a portion of the morning of October 24, 2019, from 10:00 a.m. to 12:00 p.m., participating in a weekly visit with his five-month old child in Estherville. The visit ended at noon, which left an hour to get to the appointment in Spencer. Mr. Zeitler called Ms. Goodier's number and left a message that he was unable to appear for the RESEA appointment because he lacked a ride. The weight of the evidence establishes that Mr. Zeitler made the call before the scheduled appointment. Ms. Goodier promptly attempted to return the call. Mr. Zeitler did not answer. Ms. Goodier was unable to leave a voicemail message because the voice message mailbox was full. Ms. Goodier then entered the decision that denied benefits effective October 20, 2019, based on Mr. Zeitler's failure to appear for the RESEA meeting. Mr. Zeitler has not made further contact with the Agency to resolve the disqualification issue by participating in the required RESEA meeting.

REASONING AND CONCLUSIONS OF LAW:

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".

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:

Reemployment services and eligibility assessment procedure.

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

(2) Purpose.

a. 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.

b. The eligibility assessment program is used to accelerate the individual's return to work and systematically review the individual's efforts towards the same goal.

(3) Reemployment services and eligibility assessment 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 or eligibility assessment. The claimant shall contact the agency prior to the scheduled appointment or service to advise the department of the justifiable cause.

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. Justifiable cause includes when the claimant is scheduled for an employment interview, is verified return to work, or both prior to the scheduled appointment or service.

(7) Eligibility assessment procedure.

a. Before an individual has claimed five weeks of intrastate benefits, the workforce development center shall receive a computer-selected list of individuals claiming benefits within the target population for review.

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

c. Once selected for an initial or subsequent eligibility assessment, claimants are required to participate in all components of the assessment as determined by the department.

d. A Notice to Report shall be sent by the workforce development center to an individual who is in an active status at the time of its printing. If the individual does not respond, the department must issue an appropriate failure to report decision and lock the claim to prevent payment.

e. Selected claimants must report in person to the designated workforce development center to receive staff-assisted services for the initial assessment.

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.

(8) Conducting the first eligibility assessment interview.

a. All available evidence must be examined to detect potentially disqualifying issues.

b. The individual's need for advice, assistance or instructions must be determined and conveyed to the individual.

c. The interview must convey to the individual the requirements that must be satisfied to maintain eligibility.

d. This advice, assistance or instruction constitutes an understanding and agreement between the individual and the unemployment insurance representative at the conclusion of the interview regarding the individual's willingness and ability to eliminate any barriers to obtaining reemployment which otherwise would result in referral for adjudication.

e. The individual shall be advised of what constitutes an acceptable effort to obtain reemployment in accordance with state policy, with consideration for local labor market information and the individual's occupation.

f. The final objective of the interview is to determine whether a subsequent interview is needed. This determination shall be based on expected return to work date, job openings in the area, local labor market conditions, and other.

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.

(1) An individual who files a weekly continued claim will have the benefit payment automatically deposited weekly on a debit card specified by the department.

(2) 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.

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. *Id.* Justifiable cause for failure to participate includes an important and significant reason which a reasonable person would consider adequate justification in view of the paramount importance of reemployment to the claimant. Justifiable cause includes when the claimant is scheduled for an employment interview, is verified return to work, or both prior to the scheduled appointment or service. *Id.* The claimant shall contact the agency prior to the scheduled appointment or service to advise the department of the justifiable cause. *Id.* Failure to report for the appointment, failure to contact the agency prior to the scheduled appointment or service to advise the department of the justifiable cause for missing the appointment, or failure to have justifiable cause for failing to report for the appointment means the claimant has failed to meet the availability requirements of the law. *Id.*

For the reasons that follow, the administrative law judge concludes the claimant did not provide justifiable cause for the failure to report as directed to participate in a reemployment services appointment. Mr. Zeitler received appropriate notice of the October 24, 2019 appointment and in fact knew the date, time and location of the appointment 10 days before the appointment. Mr. Zeitler had a reasonable opportunity to arrange transportation to the appointment, but failed to do so. Mr. Zeitler's transportation to the appointment was a matter of personal responsibility. Under the circumstances, the transportation issue did not provide justifiable cause for missing the appointment. Nor did Mr. Zeitler's weekly visit with his child provide justifiable cause for missing the appointment. That visit was done at noon and left sufficient time for Mr. Zeitler to travel to the meeting in Spencer, if Mr. Zeitler had made appropriate arrangements. By failing to report as directed for the October 24, 2019 meeting, Mr. Zeitler failed to comply with the availability requirements. Benefits are denied effective October 20, 2019 and continuing until the claimant reports for this appointment.

DECISION:

The October 25, 2019 (reference 07) unemployment insurance decision is affirmed. The claimant has not provided justifiable cause for failing to report for a reemployment services appointment on October 24, 2019. Based on the failure to appear as directed, the claimant has not met the availability requirements. Benefits are denied effective October 20, 2019, and continuing until the claimant reports for the reemployment services appointment.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn