

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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IOWA WORKFORCE
DEVELOPMENT DEPARTMENT

AMENDED

Appeal Number: 04A-UI-10823-SWT
OC: 08/22/04 R: 03
Claimant: Appellant (4)

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 Workforce Development. 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)

(Decision Dated & Mailed)

Section 96.4-7 - Failure to Participate in Reemployment Services
Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated September 30, 2004, reference 05, that he was ineligible for unemployment insurance benefits from September 26, 2004, and continuing until he participated in reemployment services. A telephone hearing was held on October 28, 2004. The claimant participated in the hearing. The claimant agreed that the issue of whether he was able and available for work could be considered and decided, and he waived the seven-day notice of the issue required by the law.

FINDINGS OF FACT:

The claimant filed a new claim for unemployment insurance benefits with an effective date of August 22, 2004. The claimant was informed and understood that under the unemployment insurance rules, he was required to report to the Workforce Center when directed to do so. The claimant was notified he was scheduled for a reemployment services appointment on September 22, 2004.

On September 18, 2004, the claimant traveled from Cedar Rapids to Florida to help a relative who was cleaning up after the Florida hurricanes. The claimant called the Cedar Rapids Workforce office before September 22, 2004, and explained the situation and asked for a new date for his appointment. He was told that the appointment would be rescheduled and that he would receive notice of the new appointment in the mail.

The new appointment was scheduled for September 29, 2004; however, the claimant was unaware of the rescheduled appointment because he did not return to Iowa until October 2, 2004. After he returned, he discovered the decisions that held he was ineligible for benefits. He reported to the Cedar Rapids Workforce Development Center on October 5, 2004, and appealed the decisions, but the agency representative he spoke to did not schedule him for a reemployment service class.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant should be denied benefits starting September 26, 2004, because he failed to participate in reemployment services.

Iowa Code section 96.4-7 provides:

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.

The unemployment insurance rules provide that failure to participate in reemployment services without justifiable cause shall disqualify a claimant until he participates in reemployment services. Justifiable cause is defined as an important and significant reason that a reasonable person would consider adequate in view of the paramount importance of reemployment to the claimant. 871 IAC 24.6(6). The evidence establishes that the claimant's failure to participate in reemployment services should not make him ineligible for unemployment insurance benefits effective September 26, 2004, because he was unaware of the appointment until after it was over.

The next issue is whether the claimant was able to work, available for work, and earnestly and actively seeking work as required by Iowa Code section 96.4-3. The unemployment insurance rules provide that a claimant who is out of town for personal reasons for a major part of a workweek is considered unavailable for work. 871 IAC 24.23(25). The claimant, therefore, is

ineligible for benefits for the weeks ending September 25 and October 2, 2004, because he was out of town for personal reasons for the major portion of each week. The claimant is required to report to his local Workforce Development Center as soon as possible to schedule a reemployment services class.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has been overpaid \$182.00 for the weeks ending September 25, 2004 and October 2, 2004 as he was not able and available for work.

DECISION:

The unemployment insurance decision dated September 30, 2004, reference 05, is modified in favor of the claimant. The claimant had good cause for not participating in reemployment services during the week of September 26, 2004. The claimant, however, was unavailable for work for the weeks ending September 25 and October 2, 2004, and he is ineligible for benefits for those weeks. The claimant has been overpaid \$182.00.

saw/tjc/kjf