

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CELETIA M CLAYBORNE
Claimant

APPEAL 19A-UI-00200-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 12/09/18
Claimant: Appellant (4)

Iowa Code § 96.4(3) - Able and Available
Iowa Admin. Code r. 871-24.2(1)e – Notice to Report
Iowa Admin. Code r. 871-24.23(11) – Failure to Report

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 7, 2019, (reference 03) unemployment insurance decision that denied benefits because of a failure to report as directed. After due notice was issued, a telephone conference hearing was set for January 24, 2019. Claimant participated. Claimant's Exhibit A was received into evidence.

ISSUE:

Did the claimant fail to report as directed or offer a good cause reason for failure to do so?

FINDINGS OF FACT:

Having heard the testimony and having examined the evidence in the record, the administrative law judge finds: On December 20, 2018, a notice was mailed to the claimant to be available for a call from IWD on January 2, 2019, at 10:40 a.m. about her availability for work the week ending December 15, 2018. The claimant testified she did not get the notice, but returned a voicemail left by Iowa Workforce Development on January 2, 2019 the next day, January 3, 2019. The claimant filed a weekly claim and mistakenly indicated she was not available for work for the week ending December 15, 2018. However, on Thursday, December 20, 2018 claimant gave birth. She provided a doctor's note releasing her to return to work effective January 28, 2019. (Exhibit A).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the underlying issue was the result of a reporting error, and the claimant has established a good cause reason for having failed to report as directed. However, the claimant is not able to and available for work for the five-week period ending January 26, 2019.

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 Admin. Code r. 871-24.2(1)e provides:

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 in the individual's account at a financial institution or on a selected debit card.

(2) 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.

(3) 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.

At several points during claimant's testimony, her answers to questions were less than forthcoming and honest, bringing her credibility seriously into question. Even if claimant was being honest in her testimony regarding the fact-finding interview and did contact the department by January 3, 2019, she has still not established she was able to and available for work for the time period in question.

Iowa Admin. Code r. 871-24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

To be able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Claimant gave birth on Thursday, December 20, 2018. Inasmuch as the treating physician has not released the claimant to return to work until Monday, January 28, 2019, she has not established her ability to work for the five-week period ending January 26, 2019. Benefits are therefore withheld for the five-week period ending January 26, 2019, but allowed beginning the week on January 27, 2019, provided claimant makes herself able to and available for work as of that date and meets all other eligibility requirements.

Claimant is on notice that she must conduct at least two work searches per week and file weekly claims in order to retain eligibility for benefits.

DECISION:

The January 7, 2019, (reference 03) unemployment insurance decision is modified in favor of the claimant. The claimant is not able to and available for work beginning December 23, 2018 and ending January 26, 2019. Benefits are withheld for the five-week period ending January 26, 2019. The claimant is able to work and available for work effective January 27, 2019. Benefits are allowed, provided she is otherwise eligible.

Nicole Merrill
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Decision Dated and Mailed

nm/rvs