

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LISA E POLENSKE
Claimant

APPEAL 19A-UI-08986-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 09/15/19
Claimant: Appellant (2R)**

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/appellant filed an appeal from the November 12, 2019 (reference 03) unemployment insurance decision that denied benefits because claimant failed to report as directed. After due notice was issued, a telephone hearing was held on December 10, 2019. Claimant participated personally. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records including the fact-finding documents.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having examined the evidence in the record, the administrative law judge finds: Claimant received a notice to be available for a telephone call from Iowa Workforce Development on November 8, 2019 at 8:25 a.m. regarding a pension that she reported receiving when she filed her weekly-continued claim for the week-ending September 28, 2019.

Prior to November 8, 2019, claimant had spoken with an Iowa Workforce Development representative in an attempt to have the fact-finding interview rescheduled because she had already accepted on-call work as a substitute teacher for November 8, 2019. She was told that the fact-finding interview could not be rescheduled. Claimant was never advised that she could send in a statement in writing as an alternative to participating in the fact-finding interview.

Claimant was working on-call as a substitute teacher on November 8, 2019 at 8:25 a.m. and was unable to accept the telephone call. Claimant attempted to contact the Iowa Workforce Development representative that same day after she finished teaching. Claimant was told that she could not speak to the representative because it was more than half an hour after the scheduled time of the fact-finding interview.

Claimant has reported that she is able to and available for work each week that she filed weekly-continued claims for benefits. Claimant has reported her wages earned each week from her on-call substitute teaching. She has reported her job contacts each week that she has filed her weekly-continued claim for benefits.

The underlying issue which was to be addressed during the telephone call was whether the claimant received deductible pension payments. The claimant had received a payout from her 401K. Because this issue has not been resolved, it is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination, with notice and opportunity to be heard provided to the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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 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.

An individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. Further, a claimant must report to Iowa Workforce Development when noticed to do so.

In this case, claimant contacted Iowa Workforce Development prior to the fact-finding interview and notified the representative that she would be unavailable at the time listed. She asked for the matter to be rescheduled but it was not. Claimant was never instructed that she could submit a written statement in lieu of her participation by telephone. After she missed the telephone call, she attempted to contact the representative back the same day regarding the underlying potential pension issue but was told she could not do so because it was more than thirty-minutes after the interview time. Claimant could not participate in the telephone call because she was working on-call at the time of the interview. As such, claimant has established a good cause reason for failing to report as directed. The underlying issue regarding claimant reporting earnings from a pension (or possible 401K) must be addressed during another fact-finding interview.

DECISION:

The November 12, 2019 (reference 03) decision is reversed. The claimant has established a good cause reason for failing to report as directed. Benefits are allowed effective November 3, 2019, provided the claimant is otherwise eligible.

REMAND:

The underlying issue of whether the claimant received a pension that is deductible from her unemployment insurance benefits is remanded to the Benefits Bureau of Iowa Workforce Development for a new fact-finding interview, with notice and opportunity to be heard provided to the claimant.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/scn