

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

SOMSANITH D BANUVONG
Claimant

APPEAL 23A-UI-00901-SN

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 10/30/22
Claimant: Appellant (1)**

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, Somsanith D. Banuvong, filed a timely appeal from the January 24, 2023, (reference 05) unemployment insurance decision that denied benefits effective January 23, 2023 because of a failure to report as directed. An in-person hearing was held on February 24, 2023 at 11:10 a.m. at the IowaWorks Center at 2508 E 14th Street in Sioux City, Iowa 51101-2298. The claimant participated. The appeal was heard jointly with 23A-UI-00899-SN and 23A-UI-00900-SN. Official notice was taken of the agency records. Exhibits A, B, C, D, and E were received into the record.

ISSUES:

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

Is the claimant able to work and available for work the week-ending January 23, 2023?

FINDINGS OF FACT:

Having heard the testimony and having examined the evidence in the record, the administrative law judge finds:

The claimant still resides at his address of record in Sioux City, Iowa. Sioux City, Iowa is one of the state's larger metropolitan areas.

The claimant has worked in a seasonal capacity for Natural Beauty Growers LLC for several years. He performs agricultural work for this employer typically between February and August each year.

The administrative record NMRO shows the claimant received a work search warning for the week ending April 27, 2021.

In 2022, the claimant was laid off for the season on September 28, 2022. The claimant remained on that layoff until February 20, 2022.

The claimant provided a copy of a work search log displaying work searches he performed during the layoff. The claimant made four applications over that period on December 29, 2022, December 30, 2022, and January 4, 2023. (Exhibit A) The claimant said that he did not make any more applications than this because he said there were not enough jobs in his area. The claimant did not perform any Iowa Workforce Development Department workshops during this period. Two applications the claimant made were for packing positions at two cheese factories. The claimant expressed unfamiliarity with performing this work in the past. He also expressed uncertainty about his ability to perform lifting jobs consistent with this work, although the advertisements he responded to did not give this information. The claimant also said one of these jobs would require him to travel forty-five miles each way, which was unsatisfactory. The third job was in an industrial setting. The final position he applied to was for a mail sorting position. This position was filled by the time he applied.

Iowa Workforce Development mailed two notices to the claimant to be available for a call from IWD on January 17, 2023 at 3:00 p.m. and 3:15 p.m. The claimant received both notices to report. The claimant was called both times. The claimant did not answer these calls.

Iowa Workforce Development mailed two notices to the claimant to be available for a call from IWD on January 23, 2023 at 2:30 p.m. and 2:45 p.m. about being available for work the week ending December 31, 2022 and not accepting a job. The claimant received both notices two report. The claimant was called both times. The claimant did not answer the calls.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant be denied benefits effective January 23, 2023 for failing to report as directed.

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.

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.¹ 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.

The department retains the ultimate authority to choose the method of reporting and payment.

Iowa Admin. Code r. 871-24.23(11) provides:

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.

(28) A claimant will be ineligible for benefits because of failure to make an adequate work search after having been previously warned and instructed to expand the search for work effort.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant's testimony he did not receive the calls not credible.

On the hearing record, the claimant said he went to the Sioux City IowaWorks Center on January 23, 2023 just shortly before the time of the factfinding interview. He said he was directed to call a number. In this narrative, the claimant said that his phone did not receive the calls from the Des Moines office rather than representatives at his local IowaWorks Center. The claimant said he could not provide proof because he has since switched phones. The administrative law judge does not find this testimony credible because it appears to be quite self-serving. He also notes in the findings of facts that the claimant had been sent notices to report the preceding week and so it strains credulity that he was confused in such a way the second time around. His testimony is also inconsistent with the general view he expressed that

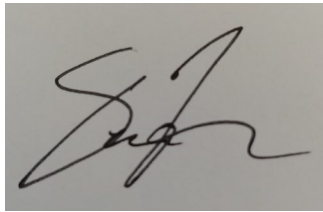
¹ As of October 1, 2016, the agency requires all continued weekly claims to be filed online.

he should not have to conduct work searches or be bothered by the agency during the layoff season.

The claimant did receive the notices to report on January 23, 2023. The claimant does not have a good faith reason for why he did not answer those calls.

DECISION:

The January 24, 2023, (reference 05) unemployment insurance decision is AFFIRMED. The claimant received the notice to report and did not answer the calls. Benefits are denied effective January 23, 2023.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is written over a light gray rectangular background.

Sean M. Nelson
Administrative Law Judge II
Iowa Department of Inspections & Appeals
Administrative Hearings Division – UI Appeals Bureau

February 28, 2023
Decision Dated and Mailed

smn/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.