

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**PATRICK L CASHMAN**  
Claimant

**APPEAL 18A-UI-01148-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 09/17/17  
Claimant: APPELLANT (2)**

Iowa Code § 96.6(2) – Timeliness of Appeal  
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  
Iowa Admin. Code r. 871-24.11 – Eligibility review program

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the November 7, 2017, (reference 07) unemployment insurance decision that found claimant was not eligible for unemployment benefits because claimant failed to participate in reemployment services. The parties were properly notified of the hearing. A telephone hearing was held on February 23, 2018. The claimant, Patrick L. Cashman, participated personally. Carmela Alden, Workforce Advisor participated on behalf of Iowa Workforce Development. Claimant's Exhibit A was admitted into the record.

**ISSUES:**

Is the claimant available for work effective October 29, 2017?  
Did the claimant fail to report as directed by a department representative or offer justifiable cause for their failure to do so?  
Did the claimant fail to participate in a reemployment services class as directed or offer justifiable cause for their failure to do so?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant filed a claim for unemployment insurance benefits with an effective date of September 17, 2017. Claimant was selected to participate in the reemployment services program. A notice was mailed to the claimant telling him to report to his local workforce office on October 30 to attend a class. The claimant obtained new employment that started on October 30. He called the agency and notified them that he had stated a new job and would not be attending the reemployment services orientation class.

The claimant did not receive the denial or overpayment decisions until well after his time to appeal had expired. The claimant promptly filed appeals as soon as he learned of the issues.

### **REASONING AND CONCLUSIONS OF LAW:**

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the claimant did provide justifiable cause for failure to report as directed to participate in reemployment services appointment

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:

Profiling for reemployment services.

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

(2) 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.

(3) Reemployment services 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.

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.

This rule is intended to implement Iowa code section 96.4(7).

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.

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. 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.

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. 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. Iowa Admin. Code r. 871-24.6(6). Justifiable cause for failure to participate is defined as "an important and significant reason which a reasonable person would consider adequate justification in view of the paramount importance of reemployment to the claimant." Iowa Admin. Code r. 871-24.6(6). Failure to report or have

justifiable cause for failing to report means the claimant has failed to meet the availability requirements of the law. Iowa Admin. Code r. 871-24.2(1)e and 871-24.23(11). Starting new employment is a justifiable cause for missing a reemployment services class. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The November 7, 2017, (reference 07) unemployment insurance decision is reversed. The claimant filed a timely appeal. The claimant has not failed to report for a reemployment services appointment as directed. Benefits are allowed effective October 29, 2017, provided the claimant is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/rvs