

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

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**OMINIA M HAMAD**  
Claimant

**APPEAL NO. 23A-UI-04578-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 01/22/23  
Claimant: Appellant (1)**

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Iowa Code Section 96.4(3) – Able & Available  
Iowa Code Section 96.4(7) – Reemployment Services  
871 IAC 24.2(1)(e) – Failure to Report as Directed

**STATEMENT OF THE CASE:**

On May 4, 2023, Ominia Hamad (claimant) filed a timely appeal from the April 24, 2023 (reference 04) decision that denied benefits effective April 16, 2023, based on the Iowa Workforce Development representative's conclusion that the claimant failed to report as directed for an April 20, 2023 reemployment and eligibility assessment [RESEA] appointment and therefore did not meet the availability requirements. After due notice was issued, a hearing was held on May 22, 2023. Claimant participated. May Miller represented Iowa Workforce Development Reemployment Services. Exhibits 1 through 5 and A were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO and DBRO.

**ISSUES:**

Whether the claimant failed to report to Iowa Workforce Development as directed for an RESEA appointment on April 20, 2023 and, therefore, did not meet the availability requirements effective April 16, 2023.

**FINDINGS OF FACT:**

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

Ominia Hamad (claimant) established an original claim for benefits that was effective January 22, 2023. The claimant made weekly claims for each of the weeks between January 29, 2023 and April 29, 2023.

On March 27, 2023, the claimant participated in an initial reemployment and eligibility assessment (RESESA) meeting with RESEA Career Planner Mark Dempsey. As part of that meeting, the claimant agreed to attend an Essential Tools workshop on April 3, 2023, a VJC: Business Panel on April 12, 2023, and a follow-up RESEA phone appointment. During the March 27, 2023 phone call, the Career Planner mentioned April 20, 2023 as the proposed date of the follow-up RESEA appointment. During the March 27, 2023 phone call, the claimant told the RESEA Career Planner that an April 20, 2023 appointment would not work because it would

conflict with the end of Ramadan. The claimant is a practicing Muslim. The proposed April 20, 2023 appointment conflicted with the Eid al-Fitr holy day. The claimant left the March 27, 2023 telephone call with an understanding that that she needed to appear for the programming on April 3 and 12 and that the RESEA Career Planner would choose a day other than April 20, 2023 for the follow-up RESEA meeting.

On March 27, 2023, the same day as the initial RESEA meeting, the Career Planned sent a follow-up email message to the claimant. See Exhibit 2. The email included the RESEA Career Planner's name, phone number and email address. The email began as follows:

Hello,

Thank you for your participation in our appointment today! I have attached the agreement we discussed during our appointment that includes future expectations that are required. Failure to comply with these requirements will result in a denial of benefits.

The March 27, 2023 email included several attachments. One of the attachments was the Reemployment Services and Eligibility Assessment (RESEA) Agreement memorializing actions the claimant was required to take as a condition for remaining eligible for unemployment insurance benefits. See Exhibit 1. The Agreement indicated the claimant had agreed to participate in the Essential Tools workshop on April 3, 2023 at 9:00 a.m., the VJC: Business Panel on April 12, 2023 at 1:00 p.m., and the "Subsequent RESEA (phone) appointment with May [Miller] on April 20, 2023 at 9:30am." The agreement also stated, in bold font:

**I understand that, if I do not complete scheduled RESEA activities within the agreed upon timeframe, it may result in the denial of unemployment insurance benefits. I understand that I am allowed only one reschedule during this process (including the initial appointment). Requesting more than one reschedule could result in suspension of my unemployment benefits until all requirements are met.** If there are circumstances that prevent you from attending and completing the above listed activities, please contact the advisor listed below at the phone number provided to discuss your options. **You must do so prior to the due dates of your scheduled activities.**

The Agreement included a name, phone number, and email address for RESEA Career Planner Mark Dempsey.

The claimant elected not to read the Reemployment Services and Eligibility Assessment (RESEA) Agreement attached to the March 27, 2023 email.

After the claimant mentioned to the RESEA Career Planner on March 27 her scheduling conflict with the April 20 follow-up RESEA appointment, and after IWD sent the RESEA agreement that included the April 20 appointment, the claimant did not make further contact with IWD, pursuant to the Agreement instructions or otherwise, regarding her need to reschedule the appointment.

The claimant participated in the April 3 and April 12, 2023 workshops as scheduled.

The claimant did not participate in the April 20, 2023 follow-up RESEA appointment. RESEA Career Planner May Miller called the claimant's phone number of record at 9:30 a.m. on April 20, 2023 for the scheduled RESEA appointment. When the claimant did not answer, Ms. Miller left a voicemail message for the claimant. Ms. Miller included her name and phone number with extension. The claimant did not return the call.

On April 20, 2023, the claimant spent the day volunteering at her mosque in conjunction with the end of Ramadan. The claimant reported to the mosque at 6:00 a.m. The claimant turned off

her cell phone upon entering the mosque. The claimant continued her participation in the Eid al-Fitr holy day activities throughout April 20, 2023.

The claimant next used her phone on April 21, 2023. The claimant elected not to listen to her voicemail messages. The claimant advises it is her habit not to listen to voicemail messages left on her phone. The claimant did not make further contact with IWD RESEA personnel.

In response to the claimant's failure to appear for the April 20, 2023 RESEA meeting, Career Planner May Miller issued the reference 04 disqualification decision from which the claimant appeals in the present matter. The claimant followed the instructions for appealing from the decision and filed an appeal on May 4, 2023.

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

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.

Iowa Admin. Code r. 871-24.6(1-6) provides:

Reemployment services and eligibility assessment procedure.

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

(1) Purpose.

a 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.

b. The eligibility assessment program is used to accelerate the individual's return to work and systematically review the individual's efforts towards the same goal.

(3) Reemployment services and eligibility assessment 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 or eligibility assessment. The claimant shall contact the agency prior to the scheduled appointment or service to advise the department of the justifiable cause..

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. Justifiable cause includes when the claimant is scheduled for an employment interview, is verified return to work, or both prior to the scheduled appointment or service.

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. ...

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. Iowa Administrative Code rule 871-24.2(1)(e). 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. Iowa Administrative Code rule 871-24.23(11).

Though the claimant's obligation to her faith community was justifiable cause for not participating in the April 20, 2023 RESEA appointment, the claimant failed to comply with the notice requirement and acted unreasonably in failing to comply with the notice requirement. The claimant knew as of the March 27, 2023 RESEA appointment that she had to comply with the RESEA requirements as a condition of maintaining her eligible for unemployment insurance benefits. According to the claimant's testimony and appearance of the April 20 appointment on the Agreement, there was a misunderstanding at the end of the March 27 meeting regarding whether the claimant would report on April 20, 2023 or whether another day would be selected. A reasonable person in the claimant's circumstances would have reviewed the Agreement document sent to the claimant on March 27, especially since the Agreement was specifically referenced in the email message to which the Agreement was attached. A reasonable person

in the claimant's circumstances would have complied with the instructions set forth on the Agreement document to call or email the RESEA Career Planner to request a reschedule. A reasonable person in the claimant's circumstances would have anticipated and responded within a reasonable time to the voicemail message Ms. May left for the claimant. A reasonable person would not have elected to forgo listening to voicemail messages as a matter of habit or practice.

Because the claimant unreasonably failed to comply with the notice requirement set forth in the RESEA agreement, the claimant's absence from the April 20, 2023 RESEA appointment amounted to a failure to report as directed and failure to participate as directed in RESEA services. Based on the claimant's handling of the matter, the claimant did not meet the availability requirements effective the week that started April 16, 2023. Benefits are denied effective April 16, 2023. The availability disqualification is ongoing until the claimant complies with the RESEA reporting requirement. The claimant must meet all other eligibility requirements.

**DECISION:**

The April 24, 2023 (reference 04) decision is AFFIRMED. The claimant had justifiable cause for not participating in the April 20, 2023 RESEA appointment, but unreasonably failed to comply with the notice requirement set forth in the RESEA agreement. For this reason, the claimant's absence from the April 20, 2023 RESEA appointment amounted to a failure to report as directed and failure to participate as directed in RESEA services. Based on the claimant's handling of the matter, the claimant did not meet the availability requirements effective the week that started April 16, 2023. Benefits are denied effective April 16, 2023. The availability disqualification is ongoing until the claimant complies with the RESEA reporting requirement. The claimant must meet all other eligibility requirements.



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James E. Timberland  
Administrative Law Judge

May 31, 2023  
Decision Dated and Mailed

jet/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  
4<sup>th</sup> 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>.

**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 está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**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.