

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

---

**BRIAN MCCREIGHT**  
Claimant

**APPEAL 22A-UI-18365-DS-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA DEPARTMENT OF WORKFORCE  
DEVELOPMENT**

**OC: 06/12/22**  
**Claimant: Appellant (1)**

---

Iowa Code § 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

On October 27, 2022, the claimant filed an appeal from the unemployment insurance decision dated October 24, 2022, (Reference 05) that denied benefits due to a failure to report for reemployment and eligibility assessment. Notice of hearing was mailed to the parties' last known addresses of record for a telephone hearing to be held at 11:00 a.m. on November 16, 2022. The claimant participated personally. The Department participated through Regina Sarmiento, Career Planner. The Department's Exhibits 1-5B were admitted to the record. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Did the claimant fail to report as directed by a Department representative?  
Is the claimant able and available for work?

**FINDINGS OF FACT:**

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

The claimant established a claim for benefits in Iowa that originated effective June 12, 2022. The Department scheduled the claimant to report to a class entitled "Create a Great Resume" on July 21, 2022. The claimant rescheduled the class for August 4, 2022, August 18, 2022, and September 1, 2022, but did not attend any of these. None of the reschedules were attributable to the Department. The claimant was then unavailable from September 5, 2022, until October 1, 2022, for personal reasons. The claimant reopened his claim for benefits on October 2, 2022 and did not contact the Department for a fifth rescheduled date for the "Create a Great Resume" class until October 19, 2022. The claimant took the class on October 27, 2022.

The Department then issued a decision dated October 24, 2022, that found the claimant eligible for benefits as of October 16, 2022, due to his failure to complete the class originally scheduled for July 19, 2022.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant failed to report to the Department as required prior to October 16, 2022, but is now able and available for work.

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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. 871-24.23(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.

The claimant was not precluded from taking the required class simply because of his personal absence from availability during September 2022. Rather, the claimant was already weeks out of compliance at the time he became unavailable and had missed the class four times at that point. The claimant received sufficient notice of his requirement to take the class and took no steps to comply until October 19, 2022. The Department made his compliance effective at the beginning of the week that he requested a fifth date for the class despite the fact that he did not actually take the class until the following week. The claimant is eligible for benefits as of October 16, 2022, and is able to work and available for work.

**DECISION:**

The October 24, 2022, (Reference 05) decision is AFFIRMED. The claimant is eligible for benefits as of October 16, 2022, provided he meets all other eligibility requirements.



---

David J. Steen  
Administrative Law Judge  
Iowa Department of Inspections & Appeals  
Administrative Hearings Division - UI Appeals Bureau

November 21, 2022  
Decision Dated and Mailed

mh

**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](http://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. *There is no filing fee to file an appeal with the Employment Appeal Board.*

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 file a petition for judicial review in district court.

2. If you do not file 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 [www.iowacourts.gov/efile](http://www.iowacourts.gov/efile). *There may be a filing fee to file the petition in District Court.*

**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. *No hay tarifa de presentación para presentar una apelación ante la Junta de Apelación de Empleo.*

**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 no presenta una apelación de la decisión del juez ante la Junta de Apelación de Empleo dentro de los quince (15) días, la decisión se convierte en una acción final de la agencia y tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días. Puede encontrar información adicional sobre cómo presentar una petición en [www.iowacourts.gov/efile](http://www.iowacourts.gov/efile). *Puede haber una tarifa de presentación para presentar la petición en el Tribunal de Distrito.*

**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.