

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

GLORIA FOX
Claimant

APPEAL NO: 13A-UI-01251-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 12/02/12
Claimant: Appellant (4/R)**

871 IAC 24.2(1)e - Failure to Report
Iowa Code § 96.4-3 - Able and Available for Work
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Gloria Fox (claimant) appealed an unemployment insurance decision dated January 28, 2013, reference 02, which denied benefits as of January 27, 2013 due to the claimant's failure to report as directed. After a hearing notice was mailed to the party's last-known address of record, a telephone hearing was held on March 4, 2013. The claimant participated in the hearing. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant failed to report as directed and whether she is able and available to work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: On January 16, 2013, the claimant was mailed notice of a telephone interview on January 24, 2013 between 3:00 p.m. and 4:00 p.m. She was not available for the interview even though called three times by Iowa Workforce. The claimant testified that she was available but her phone did not ring on January 24, 2013 at the time for the interview.

The interview was scheduled to ascertain whether the claimant was available for work because it was reported she was in the hospital on January 15, 2013 when her original fact-finding interview was scheduled. The claimant was in the hospital from January 6, 2013 through January 11, 2013. She was not available for work that week but filed for benefits claiming that she was available and received benefits for the one-week period ending January 12, 2013.

The claimant filed a claim for unemployment insurance benefits effective December 2, 2012 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issues are whether the claimant failed to report as directed and whether she is able and available to work.

871 IAC 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.

871 IAC 24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

The administrative law judge is convinced that the claimant did not intentionally fail to report and the disqualification shall be removed. The next issue to be determined is whether the claimant meets the availability requirements. The claimant was in the hospital for the week ending January 11, 2013 and does not qualify for benefits for the one-week period ending January 12, 2013. Benefits are allowed prior to and subsequent to that week, provided she is otherwise eligible.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated January 28, 2013, reference 02, is modified in favor of the appellant. The claimant did not fail to report as directed and she meets the availability requirements except for the one-week period ending January 12, 2013. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue for that week.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs