

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BOTH W LUAK
Claimant

APPEAL 21A-UI-18211-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 03/07/21
Claimant: Appellant (4)

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the August 9, 2021 (reference 04) unemployment insurance decision that found claimant was not eligible for unemployment benefits because claimant failed to report for a reemployment services appointment. The parties were properly notified of the hearing. A telephone hearing was held at 9:00 a.m. on Tuesday, October 12, 2021. Appeal numbers 21A-UI-18210-LJ-T and 21A-UI-18211-LJ-T were heard together and created one record. The claimant, Both W. Luak, participated personally. RESEA Workforce Advisor and Career Planner Stephen Marotti participated on behalf of Iowa Workforce Development (“IWD”). IWD Exhibits 1 through 10 were admitted. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records.

ISSUES:

Is the claimant available for work effective August 1, 2021?
Did the claimant fail to report as directed by a department representative to participate in a reemployment services appointment 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 March 7, 2021. Claimant was selected to participate in a Subsequent RESEA appointment on August 5, 2021. Claimant had not previously participated in this appointment during this claim year. He had previously been selected for an initial RESEA appointment. The purpose of the Subsequent RESEA appointment is to identify any barriers to employment and any areas where IWD can offer services or assistance.

Claimant received the notice to report for the appointment. Claimant reported for the telephone appointment. However, he was then scheduled to participate in an additional virtual workshop that afternoon from 1:00 p.m. until 2:30 p.m. Claimant told Marotti he would be able to attend this workshop. However, he failed to make a record of his attendance at the workshop.

Claimant's notice to report also notified him that he was required to provide Marotti with a record of his weekly job searches prior to his August 5 Subsequent RESEA appointment. (Exhibit 4) Claimant did not comply with this instruction. When he spoke with Marotti on August 5, Marotti instructed him to submit the record of job searches to him by the end of that day. Claimant did not comply with this instruction either.

On August 13, after receiving the unemployment insurance decision dated August 9, 2021 (reference 03) finding him ineligible for benefits for one week based on inadequate record of work searches, claimant came to the Marshalltown office and delivered his work search history. Later, on August 26, claimant came into the Marshalltown office to reschedule his missed virtual workshop. This workshop was scheduled for August 30. Claimant came into the Marshalltown office on August 30 and attended the workshop from one of the office's computers. After claimant attended that workshop, IWD issued the unemployment insurance decision dated August 31, 2021 (reference 05), finding claimant eligible for benefits beginning August 29, 2021.

Claimant has been able to and available for work since August 1, 2021. Claimant has made some employer contacts each week in which claimant has filed weekly-continued claims for benefits. Claimant has not refused any offers of work. Claimant has properly reported all wages, vacation pay, holiday pay, and pension pay earned for each weekly continued claim for benefits that has been filed.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not provide justifiable cause for the failure to participate in a reemployment services virtual workshop. Benefits are denied effective August 1, 2021, through August 28, 2021.

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:

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.

(2) 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.

(7) Eligibility assessment procedure.

- a. Before an individual has claimed five weeks of intrastate benefits, the workforce development center shall receive a computer-selected list of individuals claiming benefits within the target population for review.
- b. No eligibility assessment will be performed on an individual unless monetary eligibility and nonmonetary eligibility are established.
- c. Once selected for an initial or subsequent eligibility assessment, claimants are required to participate in all components of the assessment as determined by the department.
- d. A Notice to Report shall be sent by the workforce development center to an individual who is in an active status at the time of its printing. If the individual

does not respond, the department must issue an appropriate failure to report decision and lock the claim to prevent payment.

e. Selected claimants must report in person to the designated workforce development center to receive staff-assisted services for the initial assessment.

f. Before an administrative law judge can rule on a disqualification for failure to report at an Iowa workforce development center as directed, there must be evidence to show that the individual was required to report for an interview.

(8) Conducting the first eligibility assessment interview.

a. All available evidence must be examined to detect potentially disqualifying issues.

b. The individual's need for advice, assistance or instructions must be determined and conveyed to the individual.

c. The interview must convey to the individual the requirements that must be satisfied to maintain eligibility.

d. This advice, assistance or instruction constitutes an understanding and agreement between the individual and the unemployment insurance representative at the conclusion of the interview regarding the individual's willingness and ability to eliminate any barriers to obtaining reemployment which otherwise would result in referral for adjudication.

e. The individual shall be advised of what constitutes an acceptable effort to obtain reemployment in accordance with state policy, with consideration for local labor market information and the individual's occupation.

f. The final objective of the interview is to determine whether a subsequent interview is needed. This determination shall be based on expected return to work date, job openings in the area, local labor market conditions, and other.

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

(emphasis added).

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.

(1) An individual who files a weekly continued claim will have the benefit payment automatically deposited weekly on a debit card specified by the department.

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

Each week a claimant files a claim for benefits he must be able to and available for work. Iowa Code § 96.4(3). To maintain continued eligibility, a claimant shall report as directed by an authorized representative. 871 IAC 24.2(1)e. A claimant who fails to report as directed by notice mailed to the claimant is deemed unavailable for work. Iowa Admin. Code r. 24.23(11).

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. *Id.* Justifiable cause for failure to participate includes 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. *Id.* The claimant shall contact the agency prior to the scheduled appointment or service to advise the department of the justifiable cause. *Id.* Failure to report for the appointment, failure to contact the agency prior to the scheduled appointment or service to advise the department of the justifiable cause for missing the appointment, or failure to have justifiable cause for failing to report for the appointment means the claimant has failed to meet the availability requirements of the law. *Id.*

The evidence in the record shows that claimant failed to attend the virtual workshop as directed. The claimant received the notice and attended his initial phone appointment. He informed Marotti during that phone appointment that he would attend the virtual workshop. Claimant then failed to appear for the workshop or register his attendance as required. The claimant did not notify IWD of any reason he failed to report as directed, and he failed to present justifiable cause missing this workshop. Therefore, benefits are denied effective August 1, 2021, until through the week ending August 28, 2021.

DECISION:

The August 9, 2021 (reference 04) unemployment insurance decision is modified in favor of the claimant. The claimant has not provided justifiable cause for having failed to report for a reemployment services workshop. Benefits are denied effective August 1, 2021, until the week ending August 28, 2021.



Elizabeth A. Johnson
Administrative Law Judge

October 18, 2021
Decision Dated and Mailed