

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**EMILIANO T MARTINEZ**  
Claimant

**APPEAL 19A-UI-01799-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 11/25/18  
Claimant: Appellant (2)**

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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 February 19, 2019 (reference 02) 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 on March 20, 2019. The claimant participated personally and was represented by Sheree L. Smith, attorney at law. No representative participated on behalf of Reemployment Services Unit at Iowa Workforce Development (“IWD”). The administrative law judge took official notice of the claimant’s unemployment insurance benefits records.

**ISSUES:**

Is the claimant available for work effective February 10, 2019?  
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 November 25, 2018. Claimant was first selected to participate in a reemployment services appointment on January 28, 2019. Claimant had not previously participated in this appointment during this claim year. Claimant attended the January 28, 2019 meeting and met with a workforce advisor. He was informed that he would be required to attend a second appointment but no date was confirmed when the claimant left his meeting on January 28, 2019. At the January 28, 2019 meeting, claimant was informed that he would be mailed a notice to report to a second workshop. Claimant did not receive a notice to report to a workshop on February 13, 2019. The next correspondence claimant received was the notice of initial decision dated

February 19, 2019, which stated he was ineligible for benefits because he failed to attend a reemployment services appointment on February 13, 2019.

No representative from the Reemployment Services unit attended the hearing to offer evidence regarding the missed reemployment services appointment or to provide a copy of the notice that was reportedly mailed to the claimant.

Claimant has been able to and available for work since February 10, 2019. Claimant has made appropriate 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 provide justifiable cause for the failure to report as directed to participate in a reemployment services appointment. Benefits are allowed effective February 10, 2019, provided claimant is otherwise eligible.

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. 871 IAC 24.23(11).

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).

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 claimant must first be notified that an obligation to report for an appointment exists. As such, non-receipt of the notice is justifiable cause for failure to report as directed. Claimant credibly testified he did not receive notice to report to a reemployment services workshop on February 13, 2019. No representative from the reemployment services unit attended the hearing or provided evidence to refute claimant's credible testimony. Therefore, based on the evidence presented, the administrative law judge concludes the claimant is eligible to receive unemployment insurance benefits effective February 10, 2019, because the claimant did have justifiable cause for failing to report for the reemployment services orientation due to non-receipt of notice. Benefits are allowed, provided claimant is otherwise eligible.

**DECISION:**

The February 19, 2019 (reference 02) unemployment insurance decision is reversed. The claimant has provided justifiable cause for having failed to report for a reemployment services appointment and was unable to notify IWD of the justifiable cause reason for failing to report due to lack of notice. Benefits are allowed effective February 10, 2019, provided claimant is otherwise eligible.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

jlb/scn