

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KENDALL S BRUCE
Claimant

APPEAL NO. 24A-UI-07425-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 07/14/24
Claimant: Appellant (4R)

Iowa Code Section 96.4(3) – Able & Available, Failure to Report as Directed

STATEMENT OF THE CASE:

Kendall Bruce (claimant) filed a timely appeal from the August 13, 2024 (reference 03) decision that denied benefits effective August 4, 2024, based on an IWD representative's determination that Ms. Bruce failed to report as directed for an August 9, 2024 reemployment and eligibility assessment (RESEA) appointment and, therefore, did not meet the availability requirement effective August 4, 2024. After due notice was issued, a hearing was held on September 9, 2024. Ms. Bruce participated. Brittany Davis represented IWD reemployment services Exhibits 1 through 6 and A were received into evidence. The administrative law judge took official notice of the following IWD agency administrative records: DBRO, KCCO, WAGEA, NMRO, and the administrative law judge decision in Appeal Number 24AUI07424JTT.

ISSUE:

Whether the claimant failed to report as directed for an August 9, 2024 meeting and therefore did not meet the availability requirement effective August 4, 2024.

FINDINGS OF FACT:

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

Kendall Bruce (claimant) established an original claim for benefits that was effective July 14, 2024. Ms. Bruce made weekly claims for each of the six benefit weeks between July 14, 2024 and August 24, 2024. This included a weekly claim for the week that ended August 10, 2024.

On July 31, 2024, Ms. Bruce participated in an initial reemployment services appointment with an IWD Reemployment Case Management (RCM) Career Planner. In connection with the July 31, 2024, Ms. Bruce agreed to participate in additional RCM programming, including an August 1 online resume writing workshop, an August 2 weekly claims certification training, an August 9 RCM appointment via Microsoft TEAMS, and an August 13 online interviewing workshop.

On July 31, the RCM Career Planner sent an email message to Ms. Bruce's email address of record. The body of the email message listed the four RCM events Ms. Bruce had agreed to participate in and referenced an attached Reemployment Services Agreement. Ms. Bruce received and reviewed the email message with attachments. The Reemployment Services Agreement included the following warning:

I understand that, if I do not complete the scheduled RCM activities within the agreed upon timeframe, it may result in the denial of unemployment insurance benefits or the suspension of unemployment benefits until all requirements are met.

The Agreement further stated:

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 phone number, extension, and email address for the RCM Career Planner who had met with Ms. Bruce on July 31, 2024.

Ms. Bruce attended the August 1, 2024 online resume writing workshop and the August 2, 2024 weekly claims certification training.

Ms. Bruce did not attend the August 9, 2024 RCM appointment. Ms. Bruce forgot to put the 9:00 a.m. appointment on her calendar and was sleeping at the time the RCM Career Planner called her phone number of record to follow up after Ms. Bruce did not join the Microsoft TEAMS appointment. Ms. Bruce did not see or listen to a voicemail message from the RCM Career Planner. Ms. Bruce saw that she had missed two calls from an unidentified phone number and assumed the calls were spam calls.

Ms. Bruce participated in the August 13, 2024 online interviewing workshop.

On August 12, 2024, the RCM Career Planner had entered into the IWD computer system a reference 03 decision denying benefits for the period beginning August 4, 2024, based on Ms. Bruce's failure to appear for the August 9 RCM appointment. On August 13, 2023, IWD mailed the decision to Ms. Bruce. Ms. Bruce received the decision on August 14 or 15, 2024.

On August 19, 2024, Ms. Bruce filed her appeal from the reference 03 decision.

On Friday, August 23, 2024, Ms. Bruce contacted the RCM Career Planner regarding the August 9, 2024 missed RCM appointment. IWD records reflect that Ms. Bruce called and left a voicemail message for the RCM Career Planner on the morning of August 23, 2024 and then sent an email message over the noon hour on August 23, 2024.

On August 23, 2024, an RCM Career Planner called and left a voicemail message at Ms. Bruce's phone number of record. The RCM Career Planner indicated in the message that Ms. Bruce did not need to reschedule or meet with RCM personnel. The message directed Ms. Bruce to contact the unemployment insurance help line (IWD customer service) if she had questions regarding her unemployment insurance claim.

IWD reemployment services did not enter a decision acknowledging Ms. Bruce's August 23, 2024 contact with IWD or her attempt to reschedule the RCM appointment she missed on August 9, 2024.

IWD Reemployment Services left the August 23, 2024 message for Ms. Bruce because IWD RCM personnel decided to disengage from contact with Ms. Bruce in response to an August 15, 2024 (reference 02) decision that disqualified Ms. Bruce for benefits, based on July 2, 2024 discharge. The reference 02 and 03 decisions had each instructed Ms. Bruce to continue to file weekly claims while her appeal was pending. Ms. Bruce still had an active claim for benefits when IWD RCM personnel decided to discontinue reemployment services. The reference 02 disqualification decision was reversed in Appeal Number 24AUI07424JTT.

On August 27, 2024, Ms. Bruce made her weekly claim for the week ending August 24, 2024.

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 87124.2(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 87124.23(11).

Ms. Bruce failed to report as directed for the August 9, 2024 RCM Career Planning appointment. Ms. Bruce lacked a good cause or justifiable cause basis for the failure to appear for the August 9 appointment. Rather, Ms. Bruce had forgotten about the appointment and slept through the appointment. Based on the failure to report as directed, Ms. Bruce did not meet the availability requirement effective August 4, 2024. Benefits are denied effective August 4, 2024.

Ms. Bruce contacted IWD RCM on August 23, 2024 to reschedule the missed appointment and to resolve the failure-to-report issue. Based on the August 23, 2024 contact with IWD, and pursuant to IWD's established failure-to-report requalification practices, Ms. Bruce is eligible for benefits for the period beginning August 18, 2024, provided she meets all other eligibility requirements.

Based IWD's representation that the agency intends to follow up with Ms. Bruce regarding reemployment issues, including Ms. Bruce's work search, the administrative law judge did not address at the appeal hearing the work search and weekly claim reporting issues evident in the KCCO Continued Claims record.

DECISION:

The August 13, 2024 (reference 03) decision is MODIFIED in favor of the claimant/appellant as follows. The claimant failed to report as directed for an August 9, 2024 RCM Career Planning meeting. Based on the failure to report as directed, the claimant did not meet the availability requirement effective August 4, 2024. Benefits are denied effective August 4, 2024. Based on the claimant's August 23, 2024 contact with IWD RCM personnel to resolve the failure-to-report issue, the claimant is eligible for benefits for the period beginning August 18, 2024, provided she meets all other eligibility requirements.

REMAND:

Based on IWD's representation that the agency intends to follow up with the claimant regarding reemployment issues, this matter is REMANDED to IWD reemployment services for that purpose.



James E. Timberland
Administrative Law Judge

September 23, 2024
Decision Dated and Mailed

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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
6200 Park Ave
Des Moines, Iowa 50321
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
6200 Park Ave
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: 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.