

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
Division of Administrative Hearings  
Wallace State Office Building  
Des Moines, Iowa 50319

**Appeal Number: 13IWDUI263**  
**OC: 10/21/12**  
**Claimant: Appellant (2)**

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>TH</sup> Floor Lucas Building, Des Moines, Iowa 50319**.

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.

**DIMY DORESCA**  
**3845 TAM-O-SHANTER DR N**  
**BETTENDORF, IA 52722**

STATE CLEARLY

**IOWA WORKFORCE DEVELOPMENT**  
**REEMPLOYMENT SERVS. COORDINATOR**  
**SHANLYN SEIVERT & DAVID HARTMAN**

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.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to the department. 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

JOE WALSH, IWD  
JONI BENSON, IWD  
DONNI ANDERSON, IWD

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(Administrative Law Judge)

July 11, 2013

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(Decision Dated & Mailed)

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871 IAC 24.2(1)e – Reemployment Services

### **STATEMENT OF THE CASE**

Claimant/Appellant Dimy Doresca appealed a decision issued by Iowa Workforce Development (“IWD”), dated May 10, 2013, reference 01, finding she was ineligible to receive unemployment insurance benefits as of May 5, 2013 because she failed to attend a reemployment services orientation on May 9, 2013. Doresca submitted an appeal from this decision which was dated and faxed to IWD on May 20, 2013.

On May 22, 2013, IWD transmitted the administrative file to the Department of Inspections and Appeals to schedule a contested case hearing. When IWD transmitted the file, it mailed a copy of the administrative file to Doresca. On June 5, 2013, the Department of Inspections and Appeals sent out a Notice of Telephone Hearing, scheduling a contested case hearing for July 10, 2013 at 3:00 pm.

On July 10, 2013, a contested case telephone hearing was initiated by Administrative Law Judge Emily Gould Chafa. Doresca did not appear. The IWD representative did not appear. ALJ Chafa waited for more than ten minutes for one or both of the parties to join the telephone hearing via the conference calling system. Neither party appeared. This decision is based on Exhibits 1 through 8, which are considered to be the record in this matter, along with the Notice of Telephone Hearing.

### **ISSUES**

Whether the department correctly determined the claimant is ineligible to receive unemployment insurance benefits.

Whether the department correctly determined that the claimant did not establish justifiable cause for failing to participate in reemployment services.

### **FINDINGS OF FACT**

IWD selected Doresca to participate in its reemployment services program. On April 30, 2013, IWD sent Doresca a notice to report to attend a reemployment services orientation on May 9, 2013 at 11:00 am at the IowaWorks office in Davenport, Iowa. (Exhibit 7) Doresca did not attend the appointment.

IWD issued a decision on May 10, 2013, reference 01, finding Doresca was ineligible to receive unemployment insurance benefits as of May 5, 2013 because she failed to attend a reemployment services orientation appointment on May 9, 2013. Doresca submitted an appeal letter via fax on May 20, ten days after the decision date.

While waiting for the parties to join this hearing, I reviewed the file and noticed that the Notice of Telephone Hearing was not returned as undeliverable. I presume that Doresca received the notice of telephone hearing, which was sent to the proper address. I presume that the IWD representatives received the Notice of Telephone Hearing as well.

In her appeal letter, Ms. Doresca stated that she called the telephone number listed on the notice of appointment, three days before the appointment date. She left a message stating that she could not attend the scheduled appointment due to a prior commitment and stated her desire to discuss her current situation with someone. She did not receive a return call. Doresca called the same telephone number again one day before the appointment date and left a long message, explaining her employment situation and asking again to speak to someone about her situation. She did not receive a return call. She also mentioned "playing phone tag" with David Hartman. She had not talked to him as of the date of her letter. (Exhibit 2)

The appeal file did not include any updated information regarding attendance at another class or appointment, or whether or not Ms. Doresca's benefits were reinstated. The IWD representative did not appear for the hearing to provide any updated information relating to this matter. The IWD representative did not provide any information to show whether or not he ever spoke to Dimy Doresca regarding this appointment and her unemployment insurance benefits.

### **REASONING AND CONCLUSIONS OF LAW**

IWD and the Department of Economic Development jointly provide a reemployment services program.<sup>1</sup> Reemployment services may include: (1) an assessment of the claimant's aptitude, work history, and interest; (2) employment counseling; (3) job search and placement assistance; (4) labor market information; (5) job search workshops or job clubs and referrals to employers; (6) resume preparation; and (7) other similar services.<sup>2</sup>

In order to maintain continuing eligibility for benefits, an individual is required to report to IWD as directed.<sup>3</sup> Specifically, a claimant is required to participate in reemployment services when referred by IWD, unless the claimant establishes justifiable cause for failure to participate or the claimant has previously completed the training or services.<sup>4</sup> Failure by the claimant to participate without justifiable cause shall disqualify the claimant from receiving benefits until the claimant participates in reemployment services.<sup>5</sup> "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."<sup>6</sup>

Doresca provided sufficient information in her appeal letter to show her actions and reasons for missing the scheduled appointment on May 9, 2013. (Exhibit 2) Within ten days after she received the decision stating that she missed the appointment, Doresca took action to appeal that decision and to state her intention to attend a rescheduled appointment. Doresca had justifiable cause for missing the May 9, 2013 appointment because she called the listed telephone number, twice, before the appointment date and attempted to reschedule the appointment. She called three days before the appointment date and called again one day before the appointment date. She left detailed messages both times. The IWD representative did not return her calls. IWD's decision is reversed.

### **DECISION**

IWD's decision, dated May 10, 2013, reference 01, is REVERSED.  
egc

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<sup>1</sup> 871 Iowa Administrative Code (IAC) 24.6(1).

<sup>2</sup> 871 IAC 24.6(3).

<sup>3</sup> 871 IAC 24.2(1)e.

<sup>4</sup> 871 IAC 24.6(6).

<sup>5</sup> 871 IAC 24.6(6).

<sup>6</sup> 871 IAC 24.6(6)a.