

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JEFF A DVORAK
440 BRIARWOOD LANE
ROBINS IA 52328

IOWA WORKFORCE
DEVELOPMENT DEPARTMENT

Appeal Number: 05A-UI-11350-RT
OC: 09/04/05 R: 03
Claimant: Appellant (2)

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 written Notice of Appeal, directly to the **Employment Appeal Board, 4th 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.

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.

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 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 871 IAC 24.6 – Profiling for Reemployment Services
(Justifiable Cause for Failure to Participate)
Section 871 IAC 24.2-1-e – Procedures to File Claim (Failure to Report as Directed)

STATEMENT OF THE CASE:

The claimant, Jeff A. Dvorak, filed a timely appeal from an unemployment insurance decision dated October 25, 2005, reference 02, denying unemployment insurance benefits to him from October 6, 2005 through October 22, 2005. After due notice was issued, a telephone hearing was held on November 21, 2005, with the claimant participating. There was no employer or respondent noticed. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. Department Exhibit 1 was admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, including Department Exhibit 1, the administrative law judge finds: The claimant was separated from his employment on or about August 1, 2005 and filed for unemployment insurance benefits effective September 4, 2005. The first notice of any sort received by the claimant from Iowa Workforce Development was a notice to report for an in-person orientation on October 26, 2005 at 10:00 a.m. as shown at Department Exhibit 1. This notice refers to a failure to report for reemployment services orientation. The claimant did not receive any prior notice informing him that he needed to report for reemployment services or any other purpose. When the claimant received the notice to report for an in-person orientation on October 26, 2005, he called Dorothy Wilson, the person to contact and whose name appears at the bottom of the notice. He informed Ms. Wilson that he had secured employment to begin October 24, 2005 and would not be able, therefore, to attend the in-person orientation on October 26, 2005. This was acceptable to Ms. Wilson. The claimant has received unemployment insurance benefits in the amount of \$2,022.00 as follows: \$337.00 per week for six weeks, from benefit week ending September 10, 2005 to benefit week ending October 15, 2005. For benefit week ending October 22, 2005, the claimant is shown as disqualified for not being able and available for work, no doubt emanating from the decision from which the claimant appeals. The claimant has applied for no weekly claims since benefit week ending October 22, 2005. He is back at work beginning October 24, 2005.

REASONING AND CONCLUSIONS OF LAW

871 IAC 24.6 provides:

Profiling for reemployment services.

(1) The department of workforce development and the department of economic development will jointly provide a program which consists of profiling claimants and providing reemployment services.

(2) 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.

(3) Reemployment services 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.

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.

b. Reserved.

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

871 IAC 24.2(1)e provides:

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.

The method of reporting and the payment of benefits, provided the individual is otherwise eligible, shall be on a biweekly basis by mail if the claimant files a Form 60-0151.

The method of reporting shall be weekly if a voice response continued claim is filed, unless otherwise directed by an authorized representative of the department. An individual who files a voice response continued claim will have the benefit payment automatically deposited weekly in the individual's financial institution's account or be paid by the mailing of a warrant on a biweekly basis.

In order for an individual to receive payment by direct deposit, the individual must provide the department with the appropriate bank routing code number and a checking or savings account number.

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

The administrative law judge concludes that although a notice was sent to the claimant to participate in reemployment services on or about October 19, 2005, at 10:00 a.m., the claimant received no such notice. The first notice the claimant received was to participate in an in-person orientation on October 26, 2005, at 10:00 a.m. By that time the claimant had secured employment and informed Workforce Development that he would be unable to attend or

participate in the in-person orientation on October 26, 2005 because he would be at work. Accordingly, the administrative law judge concludes that the claimant has demonstrated justifiable cause for failing to appear for the reemployment services orientation at 10:00 a.m. on October 19, 2005 because he never received a notice for such reemployment services orientation. Therefore, the administrative law judge concludes that the claimant is not ineligible to receive unemployment insurance benefits through and including benefit week ending October 22, 2005. The claimant did not appear for the in-person orientation on October 26, 2005 at 10:00 a.m. because he was already employed. The claimant is ineligible to receive unemployment insurance benefits beginning with benefit week ending October 29, 2005, because the claimant is employed.

DECISION:

The representative's decision of October 25, 2005, reference 02, is reversed. The claimant, Jeff A. Dvorak, is entitled to receive unemployment insurance benefits through and including benefit week ending October 22, 2005, because although he did not participate or attend reemployment services orientation, he demonstrated justifiable cause for his failure because he never received any such notice. As a result of this decision the claimant is not overpaid any unemployment insurance benefits received by him through benefit week ending October 15, 2005 and is also entitled to receive unemployment insurance benefits for one additional week, benefit week ending October 22, 2005. Beginning with benefit week ending October 29, 2005 and continuing thereafter, the claimant is ineligible to receive unemployment insurance benefits, until or unless he demonstrates that he is otherwise entitled to such benefits, because the claimant has attained employment effective October 24, 2005.

dj/kjw