

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

TROY L. HUGHES
402 WEST MAIN STREET
FREDRICKSBURG, IA 50630

IOWA WORKFORCE DEVELOPMENT
REEMP. SERVICES COORDINATOR AND
ADVISOR RONEE SLAGLE AND VELMA
SALLIS

JONI BENSON, IWD
NICHOLAS OLIVENCIA, IWD
EMILY CHAFA, UI APPEALS MANAGER

Appeal Number: 17IWDUI277
OC: 1/01/17
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 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 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.

(Administrative Law Judge)

June 27, 2017

(Decision Dated & Mailed)

STATEMENT OF THE CASE AND PROCEDURAL BACKGROUND

This is an appeal filed by the claimant, Troy Hughes, from an unemployment insurance decision dated February 28, 2017 (reference 04). Specifically, IWD concluded Mr. Hughes was not eligible to receive unemployment insurance benefits for the week beginning February 26, 2017 because he failed to report for a scheduled reemployment and eligibility assessment ("REA") on February 27, 2017. The case was transmitted from the Iowa Workforce Development ("IWD" or "the Department") to the Department of Inspections and Appeals on March 23, 2017 to schedule a contested case hearing. A notice of telephone hearing was mailed to the parties on June 2, 2017.

On June 26, 2017, a telephone hearing was held before Administrative Law Judge Carla Hamborg. Mr. Hughes appeared personally and testified. Velma Sallis appeared on behalf of IWD. An appeal summary prepared by Ms. Sallis, along with nine exhibits, was

admitted into the record without objection. Mr. Hughes' appeal request also was admitted and considered.

ISSUE

The issue certified for appeal is whether the Department correctly determined the claimant is ineligible to receive unemployment insurance benefits because he failed to participate in reemployment services without justifiable cause.

FINDINGS OF FACT

On February 2, 2017, IWD send Mr. Hughes a written Notice to Report for his initial REA appointment on February 13, 2017 at the local IWD office in Waterloo, Iowa. The Notice to Report clearly stated: "Failure to appear on the date and time listed below WILL result in the denial of unemployment insurance benefits." (Appeal Summary, Exh. 1).

On February 13, 2017, Mr. Hughes attended his REA appointment as scheduled. During this appointment, he signed the RESEA agreement directing him to attend a reemployment service ("RES") orientation on February 22, 2017 and complete the National Career Readiness Certificate ("NCRC") within 30 days. The Agreement stated: "Please arrive 10 minutes prior to start time of scheduled activities with photo ID and please turn off your cell phone." (Appeal Summary, Exh. 2, 2a and 2b). And although the Agreement warned Mr. Hughes that he must complete all RESEA activities "within the agreed upon timeframe, " unlike the February 2, 2017 Notice to Report, the Agreement did not expressly state that a failure to report on time would result in the denial of benefits. (Appeal Summary, Exh. 2a). The Agreement provides further: "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." (Appeal Summary, Exh. 2a) (emphasis in orig.).

On February 22, 2017, Mr. Hughes arrived to the scheduled RES orientation one to two minutes late, and was locked out of the orientation. Later that day, Ms. Sallis issued a Statement of Fact/Decision Worksheet finding that Mr. Hughes failed to appear for his RES orientation, and interrupted his benefits effective February 19, 2017. (Appeal Summary, Exh. 3).

On February 23, 2017, REA advisor Megan Jensen noted in Mr. Hughes' file that she inadvertently had failed to report she had discussed with Mr. Hughes that IWD would reschedule his orientation, and his benefits would not be interrupted. Accordingly, Ms. Jensen issued a new Statement of Fact/Decision Worksheet on February 23, 2017 reinstating Mr. Hughes' benefits. (Appeal Summary, Exh. 4).

IWD subsequently rescheduled Mr. Hughes' RES orientation for February 27, 2017. (Appeal Summary, Exh. 5). Ms. Sallis testified during the hearing Mr. Hughes was

informed he should arrive at least five minutes prior to the scheduled start time of 9:00 a.m. (Sallis Testimony).

On February 24, 2017, Mr. Hughes called IWD and left a voicemail message for Ms. Jensen that he had an interview scheduled for 10:00 a.m. on February 27, 2017, and would be unable to attend the RES orientation as scheduled. Ms. Jensen was unable to return his telephone call until after the time scheduled for his RES orientation on February 27, 2017. Ms. Jensen explained that IWD policy states that if a customer misses two scheduled RES-REA appointments, his benefits will be interrupted until he attends the required class. Appeal Summary, Sallis Testimony). That same day, Ms. Sallis issued a Statement of Fact/Decision Worksheet finding that Mr. Hughes' benefits would be interrupted as of February 26, 2017. (Appeal Summary, Exh. 6); *see also* February 28, 2017 Unemployment Insurance Decision.

IWD then rescheduled Mr. Hughes' RES orientation for March 6, 2017. Mr. Hughes attended this orientation as scheduled, and Ms. Jensen issued a Statement of Fact/Decision Worksheet to reinstate his benefits accordingly. (Appeal Summary Exhs. 7-8).

Mr. Hughes testified he was one-two minutes late for his February 22, 2017 orientation because of traffic. He further testified that he provided advance notice of his conflict with the February 27, 2017 date at the soonest available opportunity, but did not receive a return phone call until after the scheduled time for the orientation.

Although he does not dispute the basic facts described in the Appeal Summary, Mr. Hughes disagrees that his conduct warranted an interruption of benefits. Mr. Hughes argues that although he was *advised* to appear early for his RES-REA appointments, he never was informed—in writing or otherwise—that appearing late for an appointment by several minutes would be treated in the same manner as a “no-show.” In addition, he also believed he had a very good reason for needing to reschedule the February 27, 2017 orientation, and should not be penalized for attending an employment interview.

APPLICABLE LAW AND DISCUSSION

The IWD works jointly with the Iowa Department of Economic Development to provide a reemployment services program. 871 Iowa Administrative Code (“IAC”) § 24.6(1). An unemployment insurance claimant is required to participate in these 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. 871 IAC § 24.6(6). The regulations define “justifiable cause” as “an important and significant reason which a reasonable person would consider adequate justification in view of the paramount importance of reemployment to the claimant.” 871 IAC § 24.6(6)“a.”

Initially, the undersigned notes IWD has a credible business reason for requiring individuals to present on time for scheduled appointments. It cannot be expected to accommodate repeated and/or frivolous requests to reschedule appointments. Nevertheless, the record shows Mr. Hughes attempted to appear as scheduled for his

February 22, 2017, and was simply one-two minutes late due to unexpected traffic. Significantly, he never was informed that he would be *prevented from attending a meeting* if he arrived a few minutes later than the scheduled time period. Although his benefits subsequently were reinstated, IWD considered the incident a “first strike” with regard to its policy requiring the interruption of benefits for a second missed appointment. IWD’s “two-strikes” policy is neither outlined in the regulations, nor detailed in the notices scheduling the various RES-REA appointments.

Even assuming IWD treated Mr. Hughes’ tardiness for the February 22, 2017 orientation appropriately, his benefits should not have been interrupted when he requested to reschedule the February 27, 2017 session. The regulations in fact *excuse* rather than penalize a claimant’s failure to participate in a training session or service upon a showing of “an important and significant reason which a reasonable person would consider adequate justification in view of the paramount important of reemployment to the claimant.” 871 IAC § 24.6(6)“a.”

This is not a case where the customer disregarded IWD directives and/or failed to communicate with his advisors. Rather, Mr. Hughes called in advance to attempt to reschedule his February 27, 2017 appointment, as expressly directed in the RESEA Agreement. The undersigned finds a scheduled job interview constitutes “an important and significant reason which a reasonable person would consider adequate justification” for needing to reschedule a RES orientation.

The IWD’s decision is **REVERSED**. IWD is directed to issue a new notice of decision finding Mr. Hughes eligible for benefits for the week of February 26, 2017.

cjh