

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

HEATHER M. REED
1520 ROYER ST
DES MOINES, IA 50316

IOWA WORKFORCE DEVELOPMENT
REEMPLOYMENT SERVS. COORDINATOR
LORI ADAMS & MARCIA FINK

TERESA K HILLARY, IWD
JONI BENSON, IWD

Appeal Number: 14IWDUI330-331
OC: 07/27/14
Claimant: Appellant (1)

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)

December 30, 2014

(Decision Dated & Mailed)

Iowa Code §96.3(7) – Overpayment Recovery
Iowa Code §96.4(3) – Able and Available for Work
871 IAC 24.2(1)e – Reemployment Services (RES)
871 IAC 24.11 – Eligibility Review Program
871 IAC 24.6(6) – Justifiable Cause (RES)

STATEMENT OF THE CASE

Claimant/Appellant Heather Reed appealed two decisions issued by Iowa Workforce Development (“IWD”). The first decision, dated November 5, 2014, reference 03, found she was ineligible to receive unemployment insurance benefits as of October 26, 2014 because she failed to attend a reemployment services orientation on October 27, 2014. The second decision, dated November 6, 2014, reference 04, found she was overpaid on her unemployment insurance claim in the amount of \$185 for one week between 10/26/2014 and 11/01/2014. Heather Reed submitted an appeal from these decisions which was postmarked on November 8, 2014 and was received in IWD’s Appeals Section on November 10, 2014.

On November 12, 2014, 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 Heather Reed. On November 17, 2014, the Department of Inspections and Appeals sent out a Notice of Telephone Hearing, scheduling a contested case hearing for December 29, 2014 at 3:00 pm.

On December 29, 2014, at 3:00 pm, a contested case telephone hearing was held before Administrative Law Judge Emily Gould Chafa. The Appellant, Heather Reed, appeared and testified. The IWD representative, Marcia Fink, appeared and testified. This decision is based on Exhibits 1 through 17, which were described on the record and admitted into evidence in this matter without objection, and the testimony of Heather Reed and Marcia Fink.

ISSUES

1. Whether the department correctly determined that the Claimant was overpaid unemployment benefits and, if so, whether the overpayment was correctly calculated.
2. Whether the department correctly determined the claimant is ineligible to receive unemployment insurance benefits.
3. 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 Heather Reed to participate in its reemployment services program. IWD sent Heather Reed a notice to report to attend a reemployment services (RES) orientation on Monday, October 27, 2014, at the Wallace Building Auditorium in Des Moines, Iowa. (Fink testimony) Heather Reed did not attend the RES class on October 27, 2014. (Exhibit 8; Fink testimony; Reed testimony) Ms. Reed did not call or contact Sue Barton or Marcia Fink before or after October 27, 2014. (Fink testimony; Exhibit 8)

IWD issued a decision on November 5, 2014, reference 03, finding Heather Reed was ineligible to receive unemployment insurance benefits as of October 26, 2014 because she failed to attend a reemployment services orientation class on October 27, 2014. (Exhibit 6) Heather Reed submitted an appeal letter on November 8, less than ten days after the decision date. (Exhibit 5)

IWD issued a decision on November 6, 2014, reference 04, finding Heather Reed was overpaid on her unemployment insurance benefits claim in the amount of \$185.00 for one week between 10/26/2014 and 11/01/2014 because she failed to report as directed for the reemployment services orientation on October 27, 2014. (Exhibit 16) Heather Reed submitted an appeal letter on November 8, less than ten days after the decision date. (Exhibit 5)

In her appeal letter, Heather Reed claimed that she had to reschedule the class and was rescheduled for November 3, 2014. (Exhibit 5) During the hearing, Heather Reed admitted that she did not attend the class at the end of October. She did not remember the date of the class.

Ms. Reed claimed that she called in and played phone tag with “a lady” for about a week. She believed that lady was Sue Barton. Ms. Reed testified that she rescheduled for the November 3, 2014 class. She did not attend that class. (Reed testimony) Ms. Reed did not remember the date or dates she called IWD and did not remember the exact length of time between her call and the scheduled RES classes. (Reed testimony)

Marcia Fink testified that Heather Reed was not scheduled to attend the November 3 RES class. (Fink testimony; Exhibits 9-10) Heather Reed’s name was not included on the list of names registered for that Monday’s RES class. (Exhibits 9-10)

IWD issued the notice of decision on November 5, 2014, because Heather Reed did not attend the required RES class on October 27, 2014. (Exhibit 6; Fink testimony) As of that date, Heather Reed had not attended the RES class. (Fink testimony; Reed testimony) Her unemployment insurance benefits claim was locked for that week, October 26, 2014 through November 1, 2014.

IWD issued the notice of decision on November 6, 2014, assessing an overpayment for one week, in the amount of \$185, for the week Reed was required to report for the RES orientation session, on October 27, 2014. (Exhibit 16; Fink testimony)

REASONING AND CONCLUSIONS OF LAW

Reemployment Services Program Requirements

IWD and the Department of Economic Development jointly provide a reemployment services program.¹ 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.²

In order to maintain continuing eligibility for benefits, an individual is required to report to IWD as directed.³ 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.⁴ Failure by the claimant to participate without justifiable cause shall disqualify the claimant from receiving benefits until the claimant participates in reemployment services.⁵ “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.”⁶

Heather Reed did not attend the RES class on October 27, 2014. Heather Reed did not attend the RES class on November 3, 2014. Even if I find Heather Reed’s testimony

¹ 871 Iowa Administrative Code (IAC) 24.6(1).

² 871 IAC 24.6(3).

³ 871 IAC 24.2(1)e.

⁴ 871 IAC 24.6(6).

⁵ 871 IAC 24.6(6).

⁶ 871 IAC 24.6(6)a.

regarding her attempted contact with an IWD representative to be credible, the undisputed evidence clearly shows that she did not attend the required RES class. Ms. Reed failed to show justifiable cause for missing the October 27, 2014 RES orientation class. IWD's decision is affirmed.

Overpayment Recovery

When IWD determines an individual who received unemployment benefits was ineligible to receive benefits, IWD must recoup the benefits received irrespective of whether the individual acted in good faith and was not otherwise at fault.⁷ IWD may, in its discretion, recover the overpayment either by having a sum equal to the overpayment deducted from any future benefits payable to the individual, or by having the individual pay IWD a sum equal to the overpayment.⁸

IWD issued a decision on November 6, 2014, reference 04, finding Heather Reed was overpaid \$185 for one week between October 26, 2014 and November 1, 2014 because she failed to report as directed for her RES orientation. (Exhibit 16) As stated above, I find that Heather Reed did not establish justifiable cause for missing her RES orientation class. Therefore, IWD's determination that she was ineligible to receive benefits was correct. The overpayment decision based on that erroneous decision must be affirmed.

DECISION

IWD's decision, dated November 5, 2014, reference 03, is AFFIRMED.

IWD's decision, dated November 6, 2014, reference 04, is AFFIRMED.
egc

⁷ Iowa Code § 96.3(7) (2013).

⁸ Iowa Code § 96.3(7) (2013).