

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

**Appeal Number: 07-IWDUI-140**  
**OC: 04/01/07**  
**Claimant: Appellant (1)**

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 written 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.

**JUSTIN SCHRODER**  
**PO BOX 324**  
**GRISWOLD IA 51535-0324**

STATE CLEARLY

**IOWA WORKFORCE DEVELOPMENT**  
**DEB SHEPHERD**  
**150 DES MOINES STREET**  
**DES MOINES IA 50309-5563**

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.

DAN ANDERSON, IWD

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(Administrative Law Judge)

October 19, 2007

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(Decision Dated & Mailed)

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20 CFR 617.18 – TRA Benefits/Disqualifications  
20 CFR 617.19 - TRA Benefits/Participation Requirements  
96.6-2 – Timeliness of Appeal  
Iowa Code Section 96.4-3 – Able and Available  
Iowa Code Section 96.4-6a – Division Approved Training

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development Department decision dated July 6, 2007, which held the claimant was not eligible to receive unemployment insurance benefits or TRA payments for the 3-weeks ending June 23, 2007, because he was not available for department approved training.

The hearing was held pursuant to due notice on May 21, 2007, by telephone conference call. The claimant participated. Deb Shepherd, TRA Benefit Coordinator, participated on behalf of Iowa Workforce Development. Department Exhibit one was received as evidence.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having considered all of the evidence in the record, finds: The claimant filed a claim for unemployment benefits effective June 17, 2007. The claimant submitted an application for department-approved training to Iowa Workforce Development that was approved for a student program at Iowa Western Community College.

As a student, the claimant was required to attend daily classes, Monday, Tuesday, Wednesday and Thursday. The department provided the claimant with information that warned him as a student he needed to attend his classes on a weekly basis in order to be eligible for benefits.

The claimant submitted to the department a reimbursement for mileage form that contained information regarding his classroom attendance for June 2007. The form showed that the claimant did not attend classes on Monday, June 4, and Tuesday, June 5, for the week ending June 9, 2007. The form further showed the claimant did not attend classes on Tuesday, June 12, and Thursday, June 14, for the week ending June 16, 2007. The form showed that the claimant missed all four days of his scheduled classes (Monday through Thursday) for the week ending June 23, 2007. The claimant missed his scheduled class days due to some pre-open heart surgery issues involving his daughter.

The department issued a decision that disqualified the claimant from receiving benefits for the 3-weeks ending June 23, 2007, because he was not available and attending class for the majority of the week, as a student at Iowa Western Community College.

The claimant did not receive the department decision, and the record shows that he has moved on several occasions. The claimant appealed by a fax communication on September 25, 2007, when he received the department overpayment decision mailed Sept 18.

#### REASONING AND CONCLUSIONS OF LAW:

*The first issue is whether the appeal is timely.*

#### **Iowa Code Section 96.6-2 provides:**

**2. Initial determination.** A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant.

Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The administrative law judge concludes that the claimant affected a timely appeal pursuant to the law section cited above, because he did not receive the disqualification decision, and he did not learn about until he received the overpayment decision. The claimant responded within the ten-day appeal period provided.

The further issue is whether the claimant should have been disqualified from receiving income benefits for the 3-weeks ending June 23, 2007.

**20 CFR 617.18 Disqualifications provides:**

**(a) State law applies.** Except as stated in paragraph (b) of this section and 617.55(b), an individual shall not be paid TRA for any week of unemployment the individual is or would be disqualified to receive UI under the disqualification provisions of the applicable state law ....

**(b) Disqualification of trainees**

**(2) Trainees ineligible. (i)** An individual who, without justifiable cause, fails to begin participation in a training program which is approved under section 617.22(a), or ceases to participate in such training, or for whom a waiver is revoked pursuant to section 617.19(c), shall not be eligible for basic TRA, or any other payment under this part 617, for the week in which such failure, cessation, or revocation occurred, or any succeeding week thereafter until the week in which the individual begins or resumes participation in a training program that is approved under section 617.22(a).

(ii) For purposes of this section and other provisions of this Part 617, the following definitions shall be used:

(B) Cessation participation. A worker shall be determined to have ceased participation in a training program when the worker fails to attend all scheduled training classes and other training activities scheduled by the training institution in any week of the training without justifiable cause.

(C) Justifiable cause. For the purposes of paragraph (b)(2) of this section, the term "justifiable cause" means such reasons as would justify an individual's conduct, ... , including but not limited to reasons beyond the individual's control....

**20 CFR 617.19 Requirement for participation in training.**

(a) In general – (1) Basic requirement. (i) All individuals otherwise entitled to basic TRA, for all weeks, ... , must either be enrolled in or participating in a training program, ... , in order to be entitled to basic TRA payments for any such week (except for continuation of payments during scheduled breaks in training of 14 days or less ....

**Iowa Code Section 96.4-6a provides:**

6.a. An otherwise eligible individual shall not be denied benefits for any week because the individual is in training with the approval of the director ....

**871 IAC 24.39 provides: Department-approved training.**

(3). The claimant must show satisfactory attendance and progress in the training course....

**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. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and

the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

**871 IAC 24.23 Availability disqualifications.** The following are reasons for a claimant being disqualified for being unavailable for work.

24.23(30) Failure to attend the major portion of the scheduled workweek for department approved training (emphasis added).

The administrative law judge concludes that the claimant is NOT eligible to receive the income benefit for the 3-weeks ending June 23, 2007, because he did not attend training program classes for the majority of the scheduled week(s), as a requirement for participation in training pursuant to the law sections cited above. The claimant missed his scheduled classes for the majority of the weeks due to a personal reason that is not recognized as a justifiable cause according to the Code of Federal Regulations. The claimant must be able and available as a condition-precedent to him receiving the benefits.

DECISION:

The decision of the representative dated July 6, 2007, reference 05, is AFFIRMED. The claimant is denied his income benefit for the 3-weeks ending June 25, 2007, because he is not eligible for it due to a failure to attend his training program for the majority of the workweek.

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