

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

MIGUEL A. PEREZ
304 CARTWRIGHT STREET
RIPPEY, IA 50235-7713

IOWA WORKFORCE DEVELOPMENT
REEMPLOYMENT SERVS. COORDINATOR
SHANLYN SEIVERT & LILLIE SIMPSON

TERESA K HILLARY, IWD
JONI BENSON, IWD

Appeal Number: 14IWDUI104-105

OC: 03/10/2013

Claimant: Appellant (6),(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)

April 21, 2014

(Decision Dated & Mailed)

871 IAC 24.2(1)e – Reemployment Services
871 IAC 24.6(6) – Reemployment Services
871 IAC 24.11
Iowa Code §96.3(7) – Recovery of Overpayment Benefits
Iowa Code §96.6(2) – Timeliness of Appeals
871 IAC 26.14(7) – Default and Dismissal

STATEMENT OF THE CASE

Claimant/Appellant Miguel Perez appealed two decisions issued by Iowa Workforce Development (“IWD”). The appeal is dated February 28, 2014. The IWD Appeals Section received the appeal on March 3, 2014.

The first decision, dated October 25, 2013, reference 04, found that Mr. Perez was ineligible to receive unemployment insurance benefits as of October 13, 2013 because he failed to attend a reemployment and eligibility assessment appointment on October 16, 2013.

The second decision, dated February 21, 2014, reference 05, found that Miguel Perez was overpaid on his unemployment insurance claim in the amount of \$3391.00 for the nine weeks between 10/13/2013 and 12/14/2013, when he failed to report as directed to the local IWD office in response to a notice that was mailed to him. This notice was mailed on September 26, 2013, for the REA appointment on October 16, 2013 at 10:15 am.

On or about March 18, 2014, IWD transmitted these administrative files 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 files to Miguel Perez. On March 24, 2014, the Department of Inspections and Appeals sent out a Notice of Telephone Hearing, scheduling a contested case hearing for April 21, 2014 at 8:30 a.m.

On April 21, 2014, at the time scheduled for the contested case hearing before Administrative Law Judge Emily Gould Chafa, the Appellant, Miguel Perez, did not appear for the hearing. Neither of the IWD representatives listed on the file appeared on behalf of IWD. Exhibits 1 – 16, all submitted by IWD, are considered to be part of the record in this matter.

ISSUES

Whether the department correctly determined that the claimant was overpaid unemployment benefits, and, if so, whether the overpayment was correctly calculated.

Whether the department correctly determined that the claimant is ineligible to receive unemployment 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 Miguel Perez to participate in its reemployment services program. On September 26, 2013, IWD sent Miguel Perez a notice to report to attend a reemployment eligibility assessment (EUC REA) appointment on October 16, 2013 at 10:15 am. (Exhibit 15) Miguel Perez did not attend that appointment. IWD issued a decision on October 25, 2013, reference 04, finding Miguel Perez was ineligible to receive unemployment insurance (UI) benefits as of October 13, 2013 because he failed to attend the reemployment services appointment on October 16, 2013. (Exhibit 11) The appeal deadline for this decision was November 4, 2013. (Exhibit 11) Miguel Perez did not appeal this decision before the deadline passed.

IWD issued a decision on February 21, 2014, reference 05, finding that Miguel Perez was overpaid on his unemployment insurance claim in the amount of \$3391.00, for the nine weeks between October 13 and December 14, 2013. (Exhibit 7) This decision stated that the overpayment resulted from his failure to report as directed to the local workforce center in response to the notice that was sent to him. He was disqualified by the decision

dated October 25, 2013. (Exhibit 7, 11) The deadline to appeal the February 21, 2014 decision was March 3, 2014. (Exhibit 7)

Miguel Perez filed an appeal dated February 28, 2014. (Exhibit 4) The IWD Appeals Section received this appeal on March 3, 2014. (Exhibit 4)

Miguel Perez failed to appear for the telephone hearing on April 21, 2014 at 8:30 am. Lillie Simpson and Shanlyn Seivert failed to appear on behalf of IWD. This ALJ waited for more than ten minutes for Miguel Perez to join the conference call to participate in his appeal hearing. He did not do so.

REASONING AND CONCLUSIONS OF LAW

Re-Employment Services 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

Miguel Perez did not participate in the hearing. The undisputed evidence presented shows that he did not appear for the required REA appointment on October 16, 2013. (Exhibits 13, 14, 15) The notice was sent to the same address as all the other mailings to Mr. Perez. He listed this same address on his appeal. (Exhibit 4)

In his appeal letter, Miguel Perez stated that he is a fulltime student and he did not get the notice on time. (Exhibit 4) He attached his class schedule from the Fall 2013 semester and attached his class schedule for the Spring 2014 semester. (Exhibits 5, 6) These class scheduled do not suffice to establish justifiable cause for failing to participate in reemployment services. His statement that he did not get the notice on

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.

time does not suffice to establish justifiable cause for failing to participate in reemployment services.

Overpayment claim

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 February 21, 2014, reference 05, finding Miguel Perez was overpaid \$3391.00 for the nine weeks between October 13, 2013 and December 14, 2013 because he failed to report as directed for his EUC REA appointment. (Exhibit 7) Perez appealed this decision on February 28, 2014. The IWD Appeals Section received the appeal on March 3, 2014. (Exhibit 4)

Timeliness of Appeals

Ineligibility for Unemployment Insurance Benefits

Iowa Code §96.6(2) requires a claimant to file an appeal of IWD's decision "within ten calendar days after notification was mailed to the claimant's last known address." The Iowa Supreme Court has determined that a timely appeal is both mandatory and jurisdictional.⁹ IWD did not certify timeliness as an issue in this appeal. However, I will briefly address the Appellant's failure to file a timely appeal from the October 25, 2013 decision.

These administrative appeal files include two decisions. In the decision dated October 25, 2013, reference 04, IWD found Miguel Perez was not eligible to receive unemployment insurance benefits as of October 13, 2013 because he failed to attend the reemployment and eligibility assessment appointment on October 16, 2013. He did not appeal that decision. The record in this matter does not include any documents to indicate that he appealed this decision within ten days of the date it was issued.

In the decision dated February 21, 2014, reference 05, IWD found Miguel Perez was overpaid \$3391.00 for the nine weeks between October 13, 2013 and December 14, 2013 because he failed to report for the EUC REA appointment on October 16, 2013. This decision includes this statement: "This decision becomes final unless an appeal is postmarked by 03/03/2014, or received by Iowa Workforce Development Appeal Section by that date. If this date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day." Perez filed this appeal in a timely manner.

Perez's appeal from the initial October 25, 2013 decision was untimely. Because his appeal was untimely, I do not have jurisdiction to consider whether IWD correctly determined that he was ineligible for unemployment insurance benefits from October

⁷ Iowa Code § 96.3(7) (2013).

⁸ Iowa Code § 96.3(7) (2013).

⁹ *Beardslee v. Iowa Dep't of Job Servs.*, 276 N.W.2d 373, 377 (Iowa 1979).

13, 2013 until he reported for the EUC REA appointment. No evidence was submitted to show that he ever reported for an EUC REA appointment.

DECISION

Because Miguel Perez failed to file a timely appeal, IWD's decision dated October 25, 2013, reference 04, is **AFFIRMED**.

Because Miguel Perez failed to appear and participate in his appeal, this appeal is **DISMISSED**.¹⁰ Based on the undisputed evidence, IWD's decision dated February 21, 2014, reference 05, finding Miguel Perez received a \$3391.00 overpayment, is **AFFIRMED**.

egc

¹⁰ 871 IAC 26.14(6) If the appealing party fails to appear, the presiding officer may decide the party is in default and dismiss the appeal.