

IOWA DEPARTMENT OF INSPECTIONS AND
APPEALS

Division of Administrative Hearings

Wallace State Office Building

Des Moines, Iowa 50319

Appeal Number: 17IWDUI206

OC: 10/16/16

Claimant: Appellant (1) REF:03

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 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.

DAVID B. KLAVE

512 – 7TH STREET SW

LE MARS, IA 51031-2252

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.

IOWA WORKFORCE DEVELOPMENT

REEMPLOYMENT SERVS. COORDINATOR

RONEE SLAGLE & NORMA DELAO

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)

February 28, 2017

(Decision Dated & Mailed)

STATEMENT OF THE CASE

Appellant David B. Klave filed an appeal dated January 2, 2017 from a decision issued by Iowa Workforce Development (IWD) dated December 28, 2016, Reference 03. IWD determined that Klave was not eligible to receive unemployment insurance benefits as of December 25, 2016 because he failed to report for a Re-Employment Services program orientation scheduled on December 27, 2016. The decision informed Klave that he had until January 7, 2017 to appeal.

IWD transmitted the case to the Department of Inspections and Appeals to schedule a contested case hearing. When IWD transmitted the case, it mailed a copy of the administrative file to Klave.

A contested case hearing was scheduled for February 24, 2017 at 1:00 p.m. Appellant Klave appeared by telephone and testified. Ms. Norma Delao testified on behalf of IWD. IWD submitted the administrative file into the record without objection.

ISSUES

Did the Department correctly determine the Claimant was ineligible to receive unemployment insurance benefits?

Did IWD correctly determine that the Claimant did not establish justifiable cause for failing to participate in reemployment services?

FINDINGS OF FACT

On November 3, 2016, Iowa Workforce Development (IWD) sent Appellant Klave a letter scheduling him for a Re-Employment and Eligibility Assessment appointment on November 16, 2016 in Sioux City, Iowa. Klave did not attend the appointment. On November 18, 2016, Klave called Ms. Delao, an IWD Workforce Advisor, and stated he was going to be late for his appointment that day. Ms. Delao pointed out that the appointment was scheduled two days earlier. Ms. Delao rescheduled the appointment for December 9, 2016 and sent a rescheduled initial notice to Klave informing him the date, time, and place of the rescheduled appointment.

On December 9, 2016, Klave attended the meeting. Additionally, Klave was handed a Re-Employment Services program (RES) notice informing him of the date, time, and location that he was to report to an

orientation on December 27, 2016. Moreover, Klave signed a Re-Employment Services and Employment Assessment (RESEA) agreement on that same day - December 9, 2016. That agreement informed Klave that he had to complete several tasks by December 9, 2016 and attend the RES orientation on December 27, 2016.

However, Klave did not attend the RES orientation on December 27, 2016. On December 27, 2016, Ms. Delao placed a “lock” on Klave’s account denying him benefits because he failed to attend the orientation appointment. It was also noted that Klave failed to call in to IWD to justify his absence on December 27, 2016. Subsequently, on February 13, 2017, Klave did attend the RES orientation and his benefits were “unlocked” as of February 5, 2017.

Klave does not have evidence that he attended the appointment. Klave contends, however, in his appeal that he “missed the original correspondence involving a reemployment services orientation.” However, the agreement he signed on December 9, 2016 specifically set out his RES orientation date. The agreement also stated “I understand that, if I do not complete scheduled RESEA activities within the agreed upon timeframe, it will result in the denial of unemployment insurance benefits.” Moreover, the hand-delivered notice of the RES orientation stated the time, date, and location of the RES orientation.

Klave suffers from COPD. He had serious memory issues at the time of the orientation because he was not sleeping well.

CONCLUSIONS OF LAW

IWD and the Department of Economic Development jointly provide a Re-Employment Services program. Iowa Admin. Code r. 871-24.6(1)(96) (“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.”). “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.” Iowa Admin. Code r. 871-24.2(1)(e)(96).

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. Iowa Admin. Code r. 871-24.6(3)(96).

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.

Iowa Admin. Code r. 871-24.6(6)(96).

There is no serious dispute that Klave did not attend the appointment. Klave explains that he “missed” the notice to attend the appointment. Ordinarily, a claim by a benefits recipient that he simply did not receive notice would be insufficient to meet the justifiable cause standard.

The evidence the Department submitted showing that the notice was hand delivered is credible and supported by Ms. Delao’s contemporaneous notes. Nonetheless, it is conceivable that even if the Department delivers a notice, there may be a justifiable cause for not attending or calling for the missed appointment due to medical issues. In fact, Ms. Delao’s notes from December 9, 2016, reflected a discussion about Klave applying for social security disability benefits. However, Klave has not submitted any medical evidence to support justifiable cause for failing to attend the RES orientation. Later, Klave did, in fact, attend the orientation and his benefits were “unlocked.” Accordingly, it appears there was not justifiable cause for Klave’s absence from the RES orientation on this record.

DECISION

Iowa Workforce Development’s decision dated December 28, 2016 is AFFIRMED. The Department shall take any action necessary to implement this decision.