

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

Appeal Number: 12IWDUI393
OC: 06/10/12
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

NEIL COMTOIS
4419 1ST AVE SW APT 306
CEDAR RAPIDS, IA 52405-4279

IOWA WORKFORCE DEVELOPMENT
REEMPLOYMENT SERVS. COORDINATOR
SHANLYN SEIVERT & ANN LELFORE

JOE WALSH, IWD
CARLA DENNIS, IWD

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, 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)

October 30, 2012

(Dated and Mailed)

Iowa Code § 96.6-2 – Timeliness of Appeal
871 IAC 24.26(6) – Reemployment Services

STATEMENT OF THE CASE

Claimant/Appellant Neil Comtois appeals from a decision issued by Respondent Iowa Workforce Development (“IWD”) dated July 20, 2012, reference 04, finding he is ineligible to receive unemployment insurance benefits because he failed to attend a reemployment and eligibility assessment on July 19, 2012, and denying benefits effective July 5, 2012.

On September 11, 2012, 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 appeal file to Comtois. A contested case hearing was held on October 29, 2012. Comtois did not appear as directed by the Notice of Telephone Hearing. Ann LeFlore appeared and testified on behalf of IWD. I took official notice of the documents contained in the administrative appeal file, Exhibits 1 through 3.

ISSUES

Whether the Claimant filed a timely appeal.

Whether IWD correctly determined that the Claimant did not establish justifiable cause for failing to participate in reemployment services.

FINDINGS OF FACT

Comtois has received unemployment insurance benefits in the past. IWD scheduled Comtois to attend a reemployment and eligibility assessment on July 19, 2012. Comtois did not attend the appointment.

On July 20, 2012, IWD issued a decision, reference 04, finding Comtois was ineligible to receive unemployment insurance benefits as of July 15, 2012 because he was mailed a notice to report to attend a reemployment and eligibility assessment on July 19, 2012 and he failed to report. The decision states, in part, "THIS DECISION BECOMES FINAL UNLESS AN APPEAL IS POSTMARKED BY 07/30/12, OR RECEIVED BY THE IOWA WORKFORCE DEVELOPMENT APPEAL SECTION BY THAT DATE." (Exhibit 2). Comtois' appeal is dated August 14, 2012. Comtois did not attend the hearing to explain why his appeal was untimely.

REASONING AND CONCLUSIONS OF LAW

Iowa Code section 96.6(2) requires a claimant to file an appeal of a representative's decision "within ten calendar days after notification was mailed to the claimant's last known address." The Iowa Supreme Court has determined that timely appeal is both mandatory and jurisdictional.¹

The decision dated July 20, 2012, reference 04, states, in part, "THIS DECISION BECOMES FINAL UNLESS AN APPEAL IS POSTMARKED BY 07/30/12, OR RECEIVED BY THE IOWA WORKFORCE DEVELOPMENT APPEAL SECTION BY THAT DATE." (Exhibit 2). Comtois' appeal is dated August 14, 2012. In his appeal he did not provide a reason why his appeal was untimely. Comtois did not appear at the hearing. Comtois failed to timely appeal, I do not have jurisdiction to consider whether IWD correctly determined Comtois did not establish justifiable cause for failing to participate in reemployment services.

¹ *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979).

DECISION

Comtois failed to timely appeal. IWD's decision, dated July 20, 2012, reference 04, is affirmed.

hlp