

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

Appeal Number: 13IWDUI499-500
OC: 8/11/13
Claimant: Appellant (2, 6)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

KAYELA WEAK
211 S. LOCUST STREET
GLENWOOD, IA 51534

IOWA WORKFORCE DEVELOPMENT
REEMP. SERVICES COORDINATOR &
NANCY BROOKHART

TERESA HILLARY, 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 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)

November 26, 2013

(Decision Dated & Mailed)

STATEMENT OF THE CASE

Kayela Weak filed an appeal from two decisions issued by Iowa Workforce Development (the Department). In the first decision, dated September 23, 2013 (reference 02), the Department determined that Weak was ineligible to receive unemployment insurance benefits effective September 15, 2013 because she failed to participate in a reemployment services orientation. In the second decision, dated October 7, 2013, the Department also determined that Weak was ineligible to receive unemployment insurance benefits effective September 29, 2013 because she failed to participate in a different reemployment services orientation.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on October 15, 2013 to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on November 5, 2013. On

November 25, 2013, a telephone appeal hearing was held before Administrative Law Judge Laura Lockard. Workforce advisor Nancy Brookhart represented the Department and presented testimony. Exhibits A through F were submitted by the Department and admitted into the record as evidence. Appellant Kayela Weak appeared and presented testimony.

ISSUES

1. Whether the Appellant filed a timely appeal.
2. Whether the Department correctly determined that the Appellant did not establish justifiable cause for failing to participate in reemployment services.

FINDINGS OF FACT

Kayela Weak filed a claim for unemployment insurance benefits with an effective date of August 11, 2013. On September 10, 2013, the Department mailed Weak a workshop registration notice informing her that she was required to attend a mandatory reemployment services orientation on September 19, 2013. (Exh. D).

On September 18, 2013, Weak's father was diagnosed with cancer. Weak volunteered to attend a follow-up appointment with him on September 19 as her mother is employed and it would have been difficult for her to miss work. Weak called workforce advisor Nancy Brookhart on September 18 and left a voicemail message indicating she would be unable to attend the September 19 orientation. Weak did not get a call back from Brookhart. (Weak testimony).

On September 23, 2013, the Department issued a decision disqualifying Weak from receiving unemployment insurance benefits effective September 15, 2013 because of her failure to report for the September 19 reemployment services orientation. The decision states that it becomes final unless an appeal is postmarked or received by the Department's appeals section by October 3, 2013. (Exh. E).

After receiving the September 23 decision disqualifying her from receiving benefits, Weak called Brookhart on September 26, 2013 and left a message requesting to reschedule the orientation. Brookhart called Weak on October 1, 2013 and left a message stating that she would reschedule the orientation. Brookhart testified that she mailed Weak a notice on October 1 rescheduling her to attend an orientation on October 3. The Department does not have a copy of that notice; Brookhart testified it would be standard practice to keep a copy of the notice. Brookhart testified that the fact that the notice is missing may mean that it was not mailed or that the copy was lost after mailing. (Brookhart testimony).

Weak did not appear for the October 3 orientation. On October 7, 2013, the Department issued a second decision disqualifying Weak from receiving unemployment insurance benefits. This decision cancels benefits effective September 29, 2013 based on failure to attend the October 3 reemployment services orientation. The decision states that it

becomes final unless an appeal is postmarked or received by the Department's appeals section by October 17, 2013. (Exh. F; Brookhart testimony).

Weak filed an appeal of the Department's decisions with a postmark date of October 7, 2013. In her appeal letter, Weak states that he has been busy taking care of her father and was unable to appeal the September 23 decision on time. At hearing, Weak testified that she was staying with her parents approximately 40 minutes from her home and was not checking mail regularly. (Exh. C; Weak testimony).

Weak testified at hearing that she does not recall getting the letter rescheduling her to attend the orientation on October 3. (Weak testimony).

REASONING AND CONCLUSIONS OF LAW

A. Timeliness

Iowa Code section 96.6(2) requires that an appeal of a representative's decision must be filed by a claimant or other interested party "after notification or within ten calendar days after notification was mailed to the claimant's last known address." The Department's regulations provide that the effective date of the appeal is established by either the postmark on the appeal or the date stamp.¹ The Iowa Supreme Court has determined that timely appeal is both mandatory and jurisdictional.²

The evidence at hearing established that Weak received the September 23, 2013 disqualification decision no later than September 26, 2013, the date that she called Brookhart to discuss the disqualification and rescheduling the orientation. Despite receiving the decision in a timely fashion, Weak did not postmark her appeal until October 7, 2013, four days after the deadline to do so. The appeal of the September 23, 2013 decision is not timely. Since the appeal was not filed timely, I do not have jurisdiction to consider whether the Department was correct in disqualifying Weak from receiving unemployment insurance benefits effective September 15, 2013.

B. Justifiable Cause

Weak's appeal of the October 7, 2013 decision is timely, therefore whether she had justifiable cause for missing the October 3, 2013 reemployment services orientation will be addressed.

Iowa Workforce Development and the Iowa Department of Economic Development provide a program that offers reemployment services to individuals receiving unemployment insurance benefits. The services offered include aptitude assessments, employment counseling, job searching assistance, and resume preparation, among other things. Once the Department selects an individual for reemployment services, that individual must participate in those services unless he or she establishes justifiable cause for failure to participate or has previously completed such training. Justifiable

¹ 871 Iowa Administrative Code (IAC) 26.4(2).

² *Beardslee v. Iowa Dept. of Job Services*, 276 N.W.2d 373, 377 (Iowa 1979).

cause 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.” Failure to participate without justifiable cause disqualifies an individual from receiving benefits until he or she participates in the reemployment services.³

Weak asserted in testimony that she did not receive any letter from the Department rescheduling her to attend an October 3, 2013 reemployment services orientation. While Brookhart testified that she mailed such a letter, the Department does not have a copy of the letter. Brookhart acknowledged this could mean that such a letter was never sent. I find that the preponderance of the evidence supports the conclusion that the letter was not sent.

Even if the letter had been sent, Brookhart testified that it would not have been mailed until October 1, 2013, just two days prior to the orientation on October 3, 2013. Two days is not sufficient time to provide notice to Weak of the need to attend the orientation; it is not even clear that Weak would have received the letter by October 3 if it was mailed on October 1.

Under these circumstances, I find that Weak did not receive notice of the October 3, 2013 reemployment services orientation. Failure to receive notice of the reemployment services orientation constitutes justifiable cause for failure to appear. The Department’s October 7, 2013 decision must be reversed. It should be noted, however, that at the time the October 7 decision was issued, Weak had already been disqualified from receiving benefits effective September 15, 2013. Her benefits had not been reinstated prior to the October 7 decision, therefore reversal of the October 7 decision will not result in reinstatement of benefits. In order to reinstate her benefits, Weak should take steps to reschedule the mandatory reemployment services with the Department.

DECISION

Iowa Workforce Development’s decision dated October 7, 2013 (reference 03) is REVERSED. The Department shall take any action necessary to implement this decision. The Appellant’s appeal with regard to the September 23, 2013 decision (reference 02) is dismissed as untimely.

³ 871 Iowa Administrative Code (IAC) 24.6.