

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

Appeal Number: 10-IWDUI-213

OC: 2/14/10

Claimant: Appellant (2)

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.

**PAMELA OSHEL
434 N. PORTER
SLATER, MO 65349**

STATE CLEARLY

**IOWA WORKFORCE DEVELOPMENT
SHANLYN SEIVERT
REEMP. SERVICES COORDINATOR
430 EAST GRAND AVE.
DES MOINES, IA 50309**

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

(Administrative Law Judge)

September 7, 2010

(Decision Dated & Mailed)

STATEMENT OF THE CASE

Pamela Oshel filed a timely appeal from a decision issued by Iowa Workforce Development (the Department) dated June 1, 2010, reference 03. In this decision, the Department determined that Ms. Oshel was ineligible to receive unemployment insurance benefits because she failed to participate in reemployment services as requested. The decision states that Ms. Oshel is not eligible to receive benefits from May 23, 2010 until she reports to her workforce development center for the reemployment service.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on July 13, 2010 to schedule a contested case hearing. A hearing was originally scheduled for August 6, 2010, but that hearing was continued at the appellant's request. An order rescheduling the hearing for September 3, 2010 at 1:00 PM was mailed to all parties on August 16, 2010. That notice contained

instructions for the parties to participate in the telephone hearing. On September 3, 2010, appellant Pamela Oshel appeared for the hearing. No representative from the Department appeared for the hearing. The Department submitted Exhibits 1 through 3 in the administrative file, and these exhibits were admitted into the record as evidence. Pamela Oshel testified at the hearing.

ISSUE

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

FINDINGS OF FACT

Pamela Oshel filed a claim for unemployment insurance benefits with an effective date of February 14, 2010. On June 1, 2010, the Department issued a decision to Pamela Oshel. The decision reads as follows:

Decision:

You are not eligible to receive unemployment insurance benefits.

Explanation of Decision:

You did not participate in reemployment services as required. Therefore, you are not eligible to receive unemployment insurance benefits from 5/23/10, until you report to your workforce development center for the reemployment service.

(Exh. 2).

No representative from the Department appeared for the hearing and there is no notice in evidence that shows when or how Ms. Oshel was notified that she was required to participate in reemployment services. A Statement of Fact worksheet that is in evidence states that Ms. Oshel “was scheduled for an REA One-on-One Interview Recall at 11:00 am on May 26, 2010 but did not report.” (Exh. 3).

Ms. Oshel did not receive the notice in the mail regarding the May 26, 2010 interview until May 28, 2010, two days after the appointment was scheduled to occur. Ms. Oshel immediately contacted the Workforce Development office in Creston on May 28, 2010. (Oshel testimony; Exh. 3). Ms. Oshel explained that she had not received the notice to report in person until that day. The employee to whom Ms. Oshel spoke did not give her any opportunity to reschedule the interview, even after Ms. Oshel explained that her notice had been delinquent by two days. (Oshel testimony).

REASONING AND CONCLUSIONS OF LAW

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 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.¹

The record does not contain any notice issued by the Department to Ms. Oshel requiring her to participate in reemployment services. Reference is made to an “REA One-on-One Interview Recall” at 11:00 a.m. on May 26, 2010 in a Statement of Fact/Decision worksheet that was issued by the Department. It is not at all clear from this reference what an REA One-on-One Interview Recall is or whether it falls under the category of reemployment services. No representative from the Department was present to clarify this reference. On that basis alone, I find that the Department’s decision must be reversed.

Even assuming that the interview referenced in the Statement of Fact/Decision worksheet is somehow related to reemployment services, however, Ms. Oshel has established justifiable cause for her failure to appear. Ms. Oshel presented credible and un rebutted testimony at hearing that she did not receive the notice informing her of an interview on May 26, 2010 until May 28, 2010, two days after the interview was scheduled to take place. Ms. Oshel immediately contacted the Department upon receiving the notice and was not given any opportunity to reschedule the appointment. Ms. Oshel’s failure to receive notice of the interview until after the date on which it was scheduled certainly constitutes justifiable cause for failure to appear.

DECISION

Iowa Workforce Development’s decision dated June 1, 2010, reference 03, is REVERSED. The Department shall take prompt steps to ensure that the appellant is paid benefits from May 23, 2010 onward, provided she was otherwise eligible for those weeks. The Department shall take any further action necessary to implement this decision.

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¹ 871 Iowa Administrative Code (IAC) 24.6.