

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

**Appeal Number: 11IWDUI293**

**OC: 8/21/11**

**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, 4<sup>TH</sup> 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.

**ANGEL SALCEDO  
508 COLORADO AVE. SW  
ORANGE CITY, IA 51041**

STATE CLEARLY

**IOWA WORKFORCE DEVELOPMENT  
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.

JOE WALSH, IWD

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(Administrative Law Judge)

December 23, 2011

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(Decision Dated & Mailed)

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## STATEMENT OF THE CASE

Angel Salcedo filed an appeal from a decision issued by Iowa Workforce Development (the Department) dated October 11, 2011, reference 01. In this decision, the Department determined that Mr. Salcedo was ineligible to receive unemployment insurance benefits effective October 2, 2011 because he failed to participate in a reemployment services orientation as requested.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on November 22, 2011 to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on November 23, 2011. On December 9, 2011, a telephone appeal hearing was held before Administrative Law Judge Laura Lockard. Jean Holbrook represented the Department and presented testimony. Appellant Angel Salcedo appeared and presented testimony. Exhibits 1 through 3 were submitted by the Department and admitted into the record as evidence.

A Spanish interpreter was present at hearing to facilitate communication between the Appellant and the other hearing participants.

Mr. Salcedo disconnected from the conference call just after the Department's representative indicated she had no cross-examination questions for him. We waited several minutes in order to see whether Mr. Salcedo would call back into the conference line, but he did not do so. I attempted to call Mr. Salcedo at the telephone number that the Department's representative had on file for him, but was not successful at reaching him at that number. The Department presented no rebuttal testimony after Mr. Salcedo disconnected from the call. I advised the Department's representative that if Mr. Salcedo contacted me and had additional testimony or additional witnesses that he wished to present I would consider reopening the record; otherwise, I indicated that I would simply issue my written decision. Mr. Salcedo did not make any contact with me after the hearing record was closed.

### **ISSUE**

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

### **FINDINGS OF FACT**

Angel Salcedo filed a claim for unemployment insurance benefits with an effective date of August 21, 2011. When an individual is scheduled for a reemployment services orientation with the Department, a scheduling notice is typically mailed from a Department office in Des Moines, Iowa. The typical scheduling letter advises the individual as to when and where his or her reemployment services orientation is scheduled. The form letter has a sentence in Spanish stating that if an individual has questions, he or she should contact the Department. (Holbrook testimony).

In this case, the Department asserts that a letter was mailed to Mr. Salcedo scheduling him for a reemployment services orientation on October 7, 2011 in Sioux City, Iowa. The Department did not submit the letter as evidence in the case, nor could the Department's representative provide information regarding when the letter would have been mailed. (Holbrook testimony).

Mr. Salcedo did not appear for the reemployment services orientation on October 7, 2011 because he did not receive any letter scheduling this appointment. Mr. Salcedo lives in a household with his brother and his sister-in-law. The household member who checks the mail on a particular day places it in a central location or hands it to the addressee. Mr. Salcedo regularly checks the location where mail is placed in the home in order to retrieve mail addressed to him. Mr. Salcedo's household has had problems in the past with the post office misdelivering mail to another family with a similar last name. (Salcedo testimony).

When Mr. Salcedo did not appear for the reemployment services orientation on October 7, 2011, the Department issued a decision dated October 11, 2011 denying benefits to Mr. Salcedo effective October 2, 2011. (Exh. 2).

Mr. Salcedo appealed the Department's decision, asserting in his appeal request that he never received notice of any reemployment services orientation and was not aware of any scheduled orientation until receiving the decision denying benefits. (Exh. 1).

After becoming aware of the need to participate in a reemployment services orientation, Mr. Salcedo scheduled and attended one on October 28, 2011. (Exh. 1; Holbrook 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.<sup>1</sup>

Mr. Salcedo presented credible testimony at hearing that he did not receive the Department's notice scheduling him for a reemployment assessment on October 7, 2011. The Department provided no information at hearing about when the notice was allegedly mailed. Whether or not notice was actually sent, I believed Mr. Salcedo's testimony that he did not receive the notice. Failure to receive notification of the reemployment services appointment constitutes justifiable cause for failing to participate in the assessment.

### **DECISION**

Iowa Workforce Development's decision dated October 11, 2011, reference 01, is REVERSED. The Department shall take prompt steps to issue benefits to Mr. Salcedo retroactive to October 2, 2011, provided he was otherwise eligible. The Department shall take any further steps necessary to implement this decision.

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<sup>1</sup> 871 Iowa Administrative Code (IAC) 24.6.