

IOWA DEPARTMENT OF INSPECTIONS AND
APPEALS

Division of Administrative Hearings

Wallace State Office Building

Des Moines, Iowa 50319

Appeal Number: 17IWDUI137

OC: 08/28/16

Claimant: Appellant (2) REF:02

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.

ASHLEY L. MEARS

703 E.8TH STREET

SPENCER, IA 51301

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 & ANN CONNER

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)

January 27, 2017

(Decision Dated & Mailed)

STATEMENT OF THE CASE

Appellant Ashley L. Mears filed an appeal dated November 29, 2016 from a decision issued by Iowa Workforce Development (IWD) dated November 21, 2016, Reference 02. Previously, on November 21, 2016, IWD determined that Mears was not eligible to receive unemployment insurance benefits as of November 13, 2016 because she failed to report for a Re-Employment Services program orientation appointment scheduled on November 16, 2016. The decision informed Mears that she had until December 1, 2016 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 Mears.

A contested case hearing was scheduled for January 26, 2017 at 1:00 p.m. Appellant Mears appeared by telephone and testified. Ms. Ann Conner 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 October 20, 2016, Iowa Workforce Development (IWD) sent Appellant Mears a letter scheduling her for a Re-Employment Services Program orientation with an appointment date of November 16, 2016 in Spencer, Iowa. Mears testified that she did not receive the letter. Mears did not attend the appointment. The appointment is an orientation session where Appellant would discuss re-employment issues. On November 17, 2016, Ms. Conner, an IWD Workforce Advisor, placed a “lock” on Mears’ account denying her benefits because she failed to attend the orientation appointment. It was also noted that Mears failed to call in to IWD to justify her absence on November 16, 2016.

Mears candidly does not dispute that she failed to attend the appointment. Mears contends, however, that he did not receive the orientation letter. It was only after noticing that she had not received benefits and then later received the Decision letter of November 21, 2016 stating her unemployment benefits were denied that Mears took action by filing the instant appeal on November 29, 2016. Previously, Mears does not appear to have had any problems receiving mail at this address and it had

not changed at any relevant time. (Mears Testimony). Ms. Conner made another note on November 29, 2016 (the same date Mears appealed) stating, in part:

[Mears] came in today with her letter of disqualification and said she did get the orientation notice but didn't pay any attention to it. She agreed to attend an upcoming orientation on 12/28/16. A notice with the details was printed and given to her while she was here. Her claim is unlocked effective this week.

Apparently, Mears had contacted Ms. Conner by phone after reviewing Ms. Conner's note to assert that she had not come across the IWD letter notifying her of the orientation appointment. Ms. Conner stands by her note as an accurate reflection of their conversation.

IWD has submitted the documents scheduling Mears for her appointment. Mear's address as listed in the IWD letters is actually her address. Mears has not changed her address. Nonetheless, Mears maintains that she did not receive the letter (Notice to Report) scheduling her orientation appointment. (Mears Testimony).

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 dispute that Mears did not attend the appointment. There is also no dispute that Mear's address was the same address that IWD used to send information to Mears both after the appointment letter. Mears explains that she did not receive notice to attend the appointment. Ordinarily, a claim by a benefits recipient that she simply did not receive notice would be insufficient to meet the justifiable cause standard. It is troubling that Mears' version of her discussion with Ms. Conner differed from Ms. Conner's notes for November 29, 2016. Mears contends that she did not want to cast aspersions on the part of IWD and may have inadvertently mischaracterized the situation as her not reading the letter by stating she had not come across the letter rather than being specific - that she did not receive the letter. On the other hand, Mears took action upon receipt of the disqualification letter which indefinitely denied her benefits. Mears personally contacted Ms. Conner and later phoned her.

Mears' appeal states "I did not come across the letter that was sent for me to attend the Workshop required. . . ." That can be construed as not receiving the letter or receiving the letter but misplacing it. Additionally, Mears' maintains that she contacted Ms. Conner to contest the wording of Ms. Conner's note. It would appear that this appeal was the result of Mears' miscommunication with Ms. Conner. Not receiving notice of required attendance is sufficient cause in this case.

The evidence the Department submitted showing that the notice was sent is credible. Nonetheless, it is conceivable that even if the Department sends a notice, there may be an inadvertent delay with the postal service or some failure of delivery. Upon receipt of the disqualification letter, Mears immediately went in person to see Ms. Conner and appealed the decision. Mears dutifully attended the next scheduled assessment. Mears seems to have been timely with other appointments and the conduct of her affairs. Although a close decision, it appears there was justifiable cause for Mears' absence from the orientation appointment on this record.

DECISION

Iowa Workforce Development's decision dated November 21, 2016 is REVERSED. The Department shall take any action necessary to implement this decision.