

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

Appeal Number: 13IWDUI040
OC: 11/18/12
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.

RICKY MENDOZA
1504 11TH STREET
DES MOINES, IA 50314

STATE CLEARLY

IOWA WORKFORCE DEVELOPMENT
REEMP. SERVICES COORDINATOR

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.

JOE WALSH, IWD

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)

March 29, 2013

(Decision Dated & Mailed)

STATEMENT OF THE CASE

Ricky Mendoza filed an appeal from a decision issued by Iowa Workforce Development (the Department) dated December 27, 2012, reference 02. In this decision, the Department determined that Mendoza was ineligible to receive unemployment insurance benefits effective December 16, 2012 because he failed to participate in a reemployment and eligibility assessment.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on January 18, 2013 to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on January 24, 2013. On March 25, 2013, a telephone appeal hearing was held before Administrative Law Judge Ann Brenden. Workforce advisor Sue Barton represented the Department and presented testimony. Exhibits 1 through 3 were submitted by the Department and admitted into

the record as evidence. Appellant Ricky Mendoza appeared and presented testimony.

ISSUES

1. Whether the Claimant 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

Ricky Mendoza filed a claim for unemployment insurance benefits with an effective date of November 18, 2012 . (Exh. 2). On an unknown date, IWD sent him a notice to attend a reemployment and eligibility assessment on December 17, 2012. (Barton testimony).

Mendoza did not appear for the December 17, 2012 reemployment and eligibility assessment and did not call to make any arrangements to reschedule. On December 27, 2012, the Department issued a decision disqualifying Mendoza for benefits effective December 16, 2012 because of his failure to report for the December 17 reemployment assessment. (Exh. 2; Barton testimony).

The December 27 decision advised the Appellant that he had to file his appeal (by postmark date) by January 6, 2013, or that it had to be received by IWD Appeal Section on that date. (Exhibit 2) January 6 was a Sunday, so the date was extended to the following day, January 7. (Id.)

Mr. Mendoza's notice of appeal indicates that he signed the document on January 7, 2013. (Exh. 2). The notice of appeal bears a file stamp date of January 7, 2013 (in green ink) attributed to "Iowa Works", which Ms. Barton testified is IWD. The Appeals section file stamp date is January 14, 2013. It would appear that, since Mr. Mendoza signed the document on January 7 and it is file stamped as received by IWD on the same date, he delivered the document to IWD. Although the Appeals section stamp date is much later, there is no indication he had any control over that matter after timely filing the document directly with IWD. The undersigned finds that the appeal was timely filed. (Id.)

Mendoza asserted that he has two roommates and he does not always get his mail. He did not receive the document requiring him to appear for the reemployment and eligibility assessment. Mr. Mendoza was a credible witness, and there is nothing contradictory or incredible about his testimony. It appears that he did not realize he had failed an obligation associated with receiving unemployment insurance benefits, as supported by his continued attempts to make claims on his locked account for several weeks. This supports his claim that he was unaware of the obligation or that he missed the appointment, even after receiving notification of the problem. (Mendoza 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

As indicated in the Findings of Fact, the undersigned finds that Mendoza timely filed this appeal.

Mendoza credibly testified that he did not receive the notice directing him to report for a reemployment and eligibility assessment on December 17, 2012. There was no evidence regarding the Department’s steps to generate the notice and send it, nor any mention of when the notice was sent. Likewise, the Department did not produce a copy of the notice it asserts was sent to Mendoza. Even if the Department had produced a copy of the notice, postal errors do occasionally occur and, as noted above, the undersigned finds Mendoza’s testimony regarding his failure to receive the notice credible. Failure to receive notice of the reemployment services appointment constitutes justifiable cause for failure to appear. The Department’s decision must be reversed.

DECISION

Iowa Workforce Development’s decision dated 12/27/12, ref 02, is **REVERSED**. Department shall take prompt steps to issue benefits to Ricky Mendoza back to the date of disqualification, provided he was otherwise eligible. The Department shall take any additional action necessary to implement this decision.

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¹ 871 Iowa Administrative Code (IAC) 24.6.