

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

Appeal Number: 13IWDUI558
OC: 09/29/13
Claimant: Appellant (1)

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.

DECISION OF THE ADMINISTRATIVE LAW JUDGE

LEIF GREEN
315 Audubon Street
Sac City, IA 50583

STATE CLEARLY

IOWA WORKFORCE DEVELOPMENT
REEMP. SERVICES COORDINATOR
SHANLYN SIEVERT & WILLIAM MYERS
430 E GRAND AVENUE
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.

TERESA K. HILLARY, IWD
JONI BENSON, IWD

(Administrative Law Judge)

February 18, 2014

(Decision Dated & Mailed)

Iowa Code section 96.2(2) – Timely Appeal
Iowa Administrative Code 871 IAC 24.6 – Reemployment services participation

STATEMENT OF THE CASE

Leif Green (Green or Claimant) filed an appeal from a decision issued by Iowa Workforce Development (IWD) which determined that Green was ineligible to receive unemployment insurance benefits for failure to participate in a reemployment services orientation. The case was transmitted from Workforce Development to the Department of Inspections and Appeals to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on December 19, 2013.

On January 17, 2014, a telephone appeal hearing was held before Administrative Law Judge Martin Francis. Workforce advisor William Myers (Myers) represented the Department and offered testimony. Green also called in to the telephone conference number to participate and represented himself offering his testimony.

The hearing file was offered by the Department which included the notice of hearing, the transmittal slip, a claimant account printout, Green' faxed written request for appeal, an IWD Statement of Fact/Decision Worksheet for Green prepared by Myers, a Notice to Report for a reemployment and eligibility assessment appointment addressed to the Appellant, and the unemployment insurance decision. Official notice is taken of the documents in the appeal file.

ISSUE

Whether Claimant filed a timely appeal.

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

FINDINGS OF FACT

Green filed a claim for unemployment insurance benefits with an effective date of September 29, 2013. On October 24, 2013, the Department issued a Notice to Report to Green for an RES (Reemployment Services) Orientation meeting on November 1, 2013. The appointment letter was directed to Green' address of record. Green did not call for or attend the RES Orientation. In response Myers locked the Appellant's claim as of the week of October 27, 2013, as required by Department procedure. (Testimony of Myers; Exhibit 1 – Notice to Report)

On November 5, 2013, an unemployment insurance decision was issued disqualifying Green from receiving unemployment insurance benefits as of October 27, 2013, because of his failure to report for a reemployment and eligibility assessment on November 1, 2013. The decision informed Green it would become final unless he sent an appeal postmarked by November 15, 2013, or it was delivered to the Department's Appeal Section by that date. (Testimony of Myers; IWD unemployment insurance decision)

Green faxed a letter on November 18, 2013, appealing the decision with a copy of the decision attached which was received at the Department's Appeals Section and marked received that day. In the letter Green indicated that he had a job interview on the day scheduled for the orientation, and he had received the notice for the orientation only two days before leaving no time to reschedule the interview, and he had injured his foot with two physicians advising him not to put any pressure on it for six to eight weeks due to the severity of the injury and the possibility of life-long consequences. (Appellant letter of appeal)

On Friday November 22, 2013, Green called to Myers, who was out of the office, and left him a voice-mail message. Myers returned the call to Green the next Monday and they discussed the reasons why he had not attended the orientation. When Myers raised the possibility with Green that his injury could be an "able and available" issue that would disqualify him from benefits Green indicated he had been released by his

doctors from any movement restriction and in any event he was not searching for jobs that required he be on his feet. As a result of their conversation Myers reopened Green's account as of November 17, the week he had called. He also set up Green for a new RES appointment which he did attend. (Testimony of Myers and Green)

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

On the issue of timeliness, Iowa Code section 96.6 (2) provides in pertinent part:

"...Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision."

On the evidence in the record it is clear that Green did not file a timely appeal of the Department's decision issued November 5, 2013. The decision informed Green he had until November 15, 2013 to provide an appeal postmarked that date or delivered to the Department's Appeals Section by that date, and the Green's appeal was not sent until November 18, 2013.

However, it is also reasonable to find that the Department has produced a preponderance of the evidence in the record to establish that a notice of the reemployment services orientation on November 1, 2013, was received by Green with time for Green to contact Myers to inform him why he could not attend the orientation. The record also indicates that the Appellant's claimed injury to his feet offered as cause for his failure to miss the orientation did not do so as in his later phone conversation with Myers Green resisted that his foot injury could have been cause to find him not to be able and available for employment.

It is reasonable to conclude that the record does not reflect that the Appellant made timely appeal or showed reason to find he showed good cause not to attend a scheduled RES orientation. The Department's decision must be sustained.

¹ 871 Iowa Administrative Code (IAC) 24.6.

DECISION

Iowa Workforce Development's decision dated November 5, 2013 is **SUSTAINED**.
The Department shall take any additional action necessary to implement this decision.

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