

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

**DECISION OF THE ADMINISTRATIVE LAW JUDGE**

**DIANE D. LEEPER**  
**1323 S. KOSSUTH STREET**  
**OSCEOLA, IA 50213**

**IOWA WORKFORCE DEVELOPMENT**  
**REEMP. SERVICES COORDINATOR**  
**RONEE SLAGLE & HANNAH WEST/**  
**PAM VARNER**

**JONI BENSON, IWD AND**  
**EMILY CHAFA, UI APPEALS MANAGER**

**Appeal Number: 16IWDUI099**  
**OC: 01/10/16 Ref=01**  
**Claimant: Appellant (2)**

**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.

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.

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.

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(Administrative Law Judge)

April 22, 2016

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(Decision Dated & Mailed)

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Iowa Administrative Code 871 IAC 24.6 – Reemployment services participation

**STATEMENT OF THE CASE**

Diane D. Leeper (Ms. Leeper or Claimant) filed an appeal from a decision issued by Iowa Workforce Development (IWD or the Department) dated February 22, 2016. In this decision, IWD determined that Ms. Leeper was ineligible to receive unemployment insurance benefits effective February 14, 2016, because she failed to report for a reemployment eligibility services (RES) orientation and assessment appointment scheduled for February 18, 2016. The case was transmitted from IWD to the Department of Inspections and Appeals to schedule a contested case hearing and a telephone hearing was held April 6, 2016. Workforce advisor Pam Varner (Varner) appeared on behalf of IWD for the Workforce Advisor for Ms. Leeper, Hannah West, who had a conflict. Ms. Leeper also called in to the telephone conference number to participate. Both offered testimony on the record.

The hearing file had been offered by IWD and included the notice of hearing, the transmittal slip, a claimant account printout, the unemployment insurance decision, the

Claimant's letter of appeal, a "notice to report" addressed to the Claimant for a reemployment and eligibility assessment orientation appointment, and a statement of fact/decision worksheet. The hearing file documents were all admitted into the record.

### **ISSUES**

Whether the Department correctly determined the Claimant was ineligible to receive unemployment insurance benefits; and whether IWD correctly determined that the Claimant did not establish justifiable cause for failing to participate in reemployment services.

### **FINDINGS OF FACT**

Mr. Leeper filed a claim for unemployment insurance benefits on January 10, 2016. On January 28, 2016, IWD issued to Ms. Leeper a notice to report for a reemployment and eligibility assessment orientation appointment on February 18, 2016. The appointment letter was directed to Ms. Leeper's address of record. However, Ms. Leeper did not report for the appointment. (Testimony of Ms. Varner and Ms. Leeper; claimant account printout; notice to report)

On February 22, 2016, IWD issued a decision disqualifying Ms. Leeper from receiving unemployment insurance benefits effective February 14, 2015, because of her failure to report for the RES appointment on February 18. The decision indicated it would become final unless an appeal was postmarked by March 3, 2016, or was received at the IWD Appeals Section by that date. Ms. Leeper wrote a letter of appeal that included a copy of the IWD decision received at the IWD Appeals Section on March 2, 2016. (IWD decision of February 22, 2016)

On receiving Ms. Leeper's appeal letter, her IWD workforce advisor, Hannah West, made a call to her telephone number of record leaving a message on March 14, 2016, asking if she would be available for another RES appointment on March 17, 2016. Ms. Leeper did not respond to the message or appear for that appointment. Mr. West took no further action for that missed appointment as Ms. Leeper's account remained locked from the February 22 decision. (Testimony of Ms. Varner)

### **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 IWD 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. (See, 871 Iowa Administrative Code (IAC) 24.6)

In her appeal and at hearing Ms. Leeper indicated she was not aware of the RES appointment and only found the notice after receiving the February 22 decision when she thought to look in a magazine that she received in that time period through subscription as a gift from her mother. She added she also found an overdue water bill that cost her more in late fees. As to the phone message from Ms. West, Ms. Leeper explained that she did not hear it

because she had developed the habit of disregarding calls when she did not recognize the number or area code because of the deluge of political calls she had been receiving. Ms. Leeper also asserted that she was expecting another written appointment letter and is oriented that way due to her occupation as a nurse in which written records are essential, offering that as reason why she did not use the telephone number given on the notice to report to call to report any difficulty in getting to the appointment and produced a written request to be rescheduled instead.

Ms. Varner did testify that it was standard practice for a Workforce Advisor to contact a client by telephone when a first appointment was missed to check for availability before issuing a new notice to report. But the excuse Ms. Leeper gives for missing the original orientation meeting is plausible, as is her expectation that she would receive a new written notice to report other than a telephone call. Her testimony was credible and seemed sincere.

On that finding it is reasonable to conclude that Ms. Leeper has produced a preponderance of the evidence in the record to establish good cause for her failure to attend the RES appointment as initially scheduled. That is the core issue in this matter as the telephone message from Workforce Advisory Hannah West cannot itself be considered as a notice to report since it was not a written notice of record.

Ms. Leeper is warned that it is a condition of receipt of unemployment insurance benefits that the individual is "able and available" for work during the time benefits are received. See 871 IAC 24.22. Similar failure to use a phone number when offered or disregard of telephone messages when her in a work search may be viewed as an impediment to that requirement. But for now, on the evidence in the record the Department's decision should be reversed and the Claimant's benefits should be reopened from the point closed once she attends an RES appointment.

### **DECISION**

IT IS THEREFORE ORDERED that the Iowa Workforce Development's decision dated February 22, 2016 is **REVERSED**, per terms given. The Department shall take any additional action necessary to implement this decision.

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