

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

**Appeal Number: 14IWDUI078**

**OC: 01/12/14**

**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.

**NATASHA K PENINGER  
707 N MAIN ST  
STUART, IA 50250-0000**

STATE CLEARLY

**IOWA WORKFORCE DEVELOPMENT  
REEMPLOYMENT SERVS. COORDINATOR  
SHANLYN SEIVERT & JENNIFER GREEN**

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

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(Administrative Law Judge)

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March 31, 2014

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(Decision Dated & Mailed)

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Iowa Code §96.4(3)  
871 IAC 24.2(1)e – Reemployment Services  
871 IAC 24.11  
871 IAC 24.6(6)

**STATEMENT OF THE CASE**

Claimant/Appellant Natasha Peninger appealed a decision issued by Iowa Workforce Development (“IWD”), dated February 21, 2014, reference 04, finding she was ineligible to receive unemployment insurance benefits as of February 16, 2014 because she failed to attend a reemployment services orientation on February 20, 2014. Peninger submitted an appeal from this decision on February 24, 2014.

On March 3, 2014, IWD transmitted the administrative file to the Department of Inspections and Appeals to schedule a contested case hearing. When IWD transmitted the file, it mailed a copy of the administrative file to Natasha Peninger. On March 7,

2014, the Department of Inspections and Appeals sent out a Notice of Telephone Hearing, scheduling a contested case hearing for March 31, 2014.

On March 31, 2014, a contested case hearing was held before Administrative Law Judge Emily Gould Chafa. Natasha Peninger appeared and testified. Jennifer Green appeared and testified on behalf of IWD. Exhibits 1 through 8 were admitted into the record.

### **ISSUES**

Whether the department correctly determined that the claimant is ineligible to receive unemployment insurance benefits.

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

### **FINDINGS OF FACT**

IWD selected Natasha Peninger to participate in its reemployment services program. On February 7, 2014, IWD mailed a notice to report, to Natasha Peninger, at the address she verified as her correct mailing address, for a reemployment and eligibility assessment appointment on February 20, 2014 at 10:30 am. (Green testimony; Exhibit 6) Peninger did not attend the appointment. Ms. Peninger did not call or contact Ms. Green before or after the appointment to explain why she could not or did not attend. (Green testimony)

IWD issued a decision on February 21, 2014, reference 04, finding Peninger was ineligible to receive unemployment insurance benefits as of February 16, 2014 because she failed to attend a reemployment and eligibility assessment appointment on February 20, 2014 at 10:30 am. (Exhibits 7, 8; Green testimony) Ms. Green “locked” Ms. Peninger’s unemployment claim per the applicable requirements. (Green testimony)

Ms. Peninger testified that she did not receive the Notice to Report until Saturday, February 22, 2014. She testified to repeated problems with mail delivery. She testified that she received four letters from IWD on Saturday, February 22, 2014. (Peninger testimony) According to Natasha Peninger, she received these four letters or notices from IWD on that same date: the Notice to Report, which was mailed on February 7; the Notice of Decision, which was mailed on February 21; a letter regarding child support and her unemployment benefits; and a letter telling her to submit job contacts. (Peninger testimony)

Ms. Peninger called the local IWD office in Creston on Monday, February 24, to ask what to do about missing the appointment. She was told to file an appeal. (Peninger testimony) She did not call the telephone number listed on the Notice to Report. (Peninger testimony; Exhibit 6) In her handwritten appeal, she stated that she did not receive the notice of the appointment until February 22. (Exhibit 5) She did not contact Ms. Green after she received the notice. She did not contact Ms. Green after she filed her appeal. (Peninger testimony; Green testimony)

At the hearing, Peninger testified that she did not receive the notice of telephone hearing, which was mailed to the address she verified as her correct mailing address.

(Peninger testimony) The notice of telephone hearing was mailed to that address on March 6, 2014. (Exhibit 1) Ms. Peninger testified that she contacted IWD and then the hearing scheduled in my office to learn the hearing date and time and calling instructions. (Peninger testimony)

She verified, under oath, that 707 N Main Street, Stuart, IA 50250 is her correct and complete mailing address. (Peninger testimony) She remains at the same mailing address. Ms. Peninger asked a USPS employee why mail delivery was delayed. The USPS staff person could not provide a valid reason for the sporadic mail delivery, but acknowledged that other Stuart residents complained about delayed or sporadic mail delivery. (Peninger testimony)

### **REASONING AND CONCLUSIONS OF LAW**

IWD and the Department of Economic Development jointly provide a reemployment services program.<sup>1</sup> 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.<sup>2</sup>

In order to maintain continuing eligibility for benefits, an individual is required to report to IWD as directed.<sup>3</sup> Specifically, a claimant is required to participate in reemployment services when referred by IWD, unless the claimant establishes justifiable cause for failure to participate or the claimant has previously completed the training or services.<sup>4</sup> Failure by the claimant to participate without justifiable cause shall disqualify the claimant from receiving benefits until the claimant participates in reemployment services.<sup>5</sup> "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."<sup>6</sup>

Peninger testified that she did not receive notice of the February 20, 2014 appointment until two days after it was scheduled. She received the Notice of Decision the same day. (Peninger testimony; Exhibits 6, 7, 8) IWD mailed the notice to report to Peninger, at the correct mailing address, almost two weeks before the appointment date. (Exhibit 6; Green testimony) Peninger received this notice on February 22, 2014. (Peninger testimony; Exhibit 5)

IWD mailed the notice of decision on February 21, 2014. (Exhibits 7, 8) Peninger received this notice on February 22, 2014. (Peninger testimony; Exhibit 5)

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

<sup>2</sup> 871 IAC 24.6(3).

<sup>3</sup> 871 IAC 24.2(1)e.

<sup>4</sup> 871 IAC 24.6(6).

<sup>5</sup> 871 IAC 24.6(6).

<sup>6</sup> 871 IAC 24.6(6)a.

Ms. Peninger claimed that she received two other notices from IWD on that same date, February 22, 2014. She did not state the dates that those other two notices were mailed. (Peninger testimony)

As soon as she received both the decision stating that she missed the appointment and received the notice of appointment, on the same date, two days after the appointment, Peninger took immediate action to appeal that decision. Peninger had justifiable cause for missing the February 20, 2014 appointment because she did not receive notice of the appointment. Natasha Peninger cannot be held to be responsible for the local US Postal Service's delivery delays. IWD's decision is reversed.

### **DECISION**

IWD's decision, dated February 21, 2014, reference 04, is REVERSED.  
egc