

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

TARA M TALLMAN
P.O. BOX 43
WELTON, IA 52774

IOWA WORKFORCE DEVELOPMENT
REEMPLOYMENT SERVS. COORDINATOR
SHANLYN SEIVERT & DAVID HARTMAN

TERESA K HILLARY, IWD
JONI BENSON, IWD

Appeal Number: 14IWDUI079-080
OC: 12/23/2012
Claimant: Appellant (6),(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.

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.

(Administrative Law Judge)

March 31, 2014

(Decision Dated & Mailed)

871 IAC 24.2(1)e – Reemployment Services
871 IAC 24.6(6) – Reemployment Services
871 IAC 24.11
Iowa Code §96.3(7) – Recovery of Overpayment Benefits
Iowa Code §96.6(2) – Timeliness of Appeals
871 IAC 26.14(7) – Default and Dismissal

STATEMENT OF THE CASE

Claimant/Appellant Tara Tallman appealed two decisions issued by Iowa Workforce Development (“IWD”). She filed the appeal on February 11, 2014.

The first decision, dated June 28, 2013, reference 01, found that she was ineligible to receive unemployment insurance benefits as of June 16, 2013 because she failed to attend a reemployment and eligibility assessment appointment on June 19, 2013.

The second decision, dated February 3, 2014, reference 03, found that she was overpaid on her unemployment insurance claim in the amount of \$488.42 for the five weeks between 06/16/2013 and 07/20/2013, when she failed to report as directed to the local IWD office in response to a notice that was mailed to her. Presumably, this was the notice, mailed on June 7, 2013, for the REA appointment on June 19, 2013 at 10:30 am.

On or about February 19, 2014, IWD transmitted these administrative files 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 files to Tara Tallman. On March 6, 2014, the Department of Inspections and Appeals sent out a Notice of Telephone Hearing, scheduling a contested case hearing for March 31, 2014 at 9:00 a.m. On March 31, 2014, at the time scheduled for the contested case hearing before Administrative Law Judge Emily Gould Chafa, the Appellant, Tara Tallman, did not appear for the hearing. David Hartman appeared on behalf of IWD. Exhibits 1 – 16, all submitted by IWD, are considered to be part of the record in this matter.

ISSUES

Whether the 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.

Whether the department correctly determined that the claimant was overpaid unemployment benefits, and, if so, whether the overpayment was correctly calculated.

FINDINGS OF FACT

IWD selected Tara Tallman to participate in its reemployment services program. On June 7, 2013, IWD sent Tara Tallman a notice to report to attend a reemployment eligibility assessment (EUC REA) appointment on June 19, 2013 at 10:30 am. (Exhibit 11) Tara Tallman did not attend that appointment. IWD issued a decision on June 28, 2013, reference 01, finding Tara Tallman was ineligible to receive unemployment insurance (UI) benefits as of June 16, 2013 because she failed to attend the reemployment services appointment on June 19, 2013. (Exhibit 7) The appeal deadline for this decision was July 8, 2013. (Exhibit 7) Ms. Tallman did not appeal this decision before the deadline passed.

She attended an EUC REA appointment on July 24, 2013 at 1:00 pm. (Exhibit 10) Her unemployment insurance benefits were “unlocked” at that time. (Exhibit 10)

IWD issued a decision on February 3, 2014, reference 03, finding that Tara Tallman was overpaid on her unemployment insurance claim in the amount of \$488.42, for the five weeks between June 16 and July 20, 2013. (Exhibit 16) This decision stated that the overpayment resulted from her failure to report as directed to the local workforce center in response to the notice that was sent to her. She was disqualified by the decision dated June 28, 2013. (Exhibit 16) The deadline to appeal this decision was February 13, 2014. (Exhibit 16)

Tara Tallman filed an appeal dated February 11, 2014. (Exhibit 5) The IWD Appeals Section received her appeal on February 13, 2014. (Exhibit 5)

Tara Tallman failed to appear for the telephone hearing on March 31, 2014 at 9:00 am. David Hartman appeared on behalf of IWD and was prepared to proceed with the hearing. This ALJ and Mr. Hartman waited at least ten minutes for Ms. Tallman to join the conference call to participate in her appeal hearing. She did not do so.

REASONING AND CONCLUSIONS OF LAW

Re-Employment Services Requirements

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

In order to maintain continuing eligibility for benefits, an individual is required to report to IWD as directed.³ 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.⁴ Failure by the claimant to participate without justifiable cause shall disqualify the claimant from receiving benefits until the claimant participates in reemployment services.⁵ "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."⁶

Tara Tallman did not participate in the hearing. The undisputed evidence presented shows that she did not appear for the required REA appointment on June 19, 2013. The undisputed evidence shows that she attended a rescheduled assessment appointment on July 24, 2013. (Exhibits 9, 10, 5)

Overpayment claim

When IWD determines an individual who received unemployment benefits was ineligible to receive benefits, IWD must recoup the benefits received irrespective of whether the individual acted in good faith and was not otherwise at fault.⁷ IWD may, in its discretion, recover the overpayment either by having a sum equal to the overpayment deducted from any future benefits payable to the individual, or by having the individual pay IWD a sum equal to the overpayment.⁸

¹ 871 Iowa Administrative Code (IAC) 24.6(1).

² 871 IAC 24.6(3).

³ 871 IAC 24.2(1)e.

⁴ 871 IAC 24.6(6).

⁵ 871 IAC 24.6(6).

⁶ 871 IAC 24.6(6)a.

⁷ Iowa Code § 96.3(7) (2013).

⁸ Iowa Code § 96.3(7) (2013).

IWD issued a decision on February 3, 2014, reference 03, finding Tallman was overpaid \$488.42 for the five weeks between June 16, 2013 and July 20, 2013 because she failed to report as directed for her EUC REA appointment. (Exhibit 16) Tallman appealed this decision on February 11, 2014. The IWD Appeals Section received the appeal on February 13, 2014. (Exhibit 5)

Timeliness of Appeals

Iowa Code §96.6(2) requires a claimant to file an appeal of IWD's decision "within ten calendar days after notification was mailed to the claimant's last known address." The Iowa Supreme Court has determined that a timely appeal is both mandatory and jurisdictional.⁹

These administrative appeal files include two decisions. In the decision dated June 28, 2013, reference 01, IWD found Sherie Tallman was not eligible to receive unemployment insurance benefits as of June 16, 2013 because she failed to attend the reemployment and eligibility assessment appointment on June 19, 2013. She did not appeal that decision. The record in this matter does not include any documents to indicate that she appealed this decision within ten days of the date it was issued.

In the decision dated February 3, 2014, reference 03, IWD found Tara Tallman was overpaid \$488.42 for the five weeks between June 16, 2013 and July 20, 2013 because she failed to report for the EUC REA appointment on June 19, 2013. This decision includes this statement: "This decision becomes final unless an appeal is postmarked by 02/13/2014, or received by Iowa Workforce Development Appeal Section by that date. If this date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day." She filed this appeal in a timely manner.

Tallman's appeal from the initial June 28, 2013 decision was untimely. Because her appeal was untimely, I do not have jurisdiction to consider whether IWD correctly determined that she was ineligible for unemployment insurance benefits from June 16, 2013 until she reported for the EUC REA appointment on July 24, 2013.

DECISION

Because Tara Tallman failed to file a timely appeal, IWD's decision dated June 28, 2013, reference 01, is **AFFIRMED**.

Because Tara Tallman failed to appear and participate in her appeal, this appeal is **DISMISSED**.¹⁰ Based on the undisputed evidence, IWD's decision dated February 4, 2014, reference 03, finding Tara Tallman received a \$488.42 overpayment, is **AFFIRMED**.

egc

⁹ *Beardslee v. Iowa Dep't of Job Servs.*, 276 N.W.2d 373, 377 (Iowa 1979).

¹⁰ 871 IAC 26.14(6) If the appealing party fails to appear, the presiding officer may decide the party is in default and dismiss the appeal.