

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

Appeal Number: 12IWDUI187
OC: 1/22/12
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.

JEFFREY FREIHAGE
1515 ATLANTIC STREET
DUBUQUE, IA 52001-5804

STATE CLEARLY

IOWA WORKFORCE DEVELOPMENT
REEMPLOYMENT SERVS. COORDINATOR
SHANLYN SEIVERT
430 EAST GRAND AVENUE
DES MOINES IA 50319-0209

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.

JOE WALSH, IWD
CARLA DENNIS, IWD
MARIA RUNDE, IWD

(Administrative Law Judge)

May 17, 2012

(Decision Dated & Mailed)

871 IAC 24.26(6) – Reemployment Services

STATEMENT OF THE CASE

Claimant Jeffrey Freihage appealed from a decision issued by Iowa Workforce Development (“IWD”) dated March 26, 2012, reference 01, which determined that he was not eligible to receive unemployment insurance benefits as of March 18, 2012, because he failed to provide justifiable cause for failing to participate in reemployment services.

IWD transmitted the cases to the Department of Inspections and Appeals on April 23, 2012, to schedule a contested case hearing. A Notice of Telephone Hearing was issued on April 25, 2012, scheduling a hearing for May 17, 2012.

On May 17, 2012, this matter proceeded to a hearing before Administrative Law Judge Robert H. Wheeler. Claimant Jeffrey Freihage appeared pro se and testified. Maria Runde appeared and testified on behalf of IWD. Exhibits 1 through 4 entered the record without objection.

ISSUES

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

FINDINGS OF FACT

Mr. Freihage was notified in writing noticed to attend reemployment services. On the date of the appointment, Mr. Freihage was ill, and he called IWD to reschedule his attendance at the orientation. Ms. Runde sent another notice directing Mr. Freihage to attend reemployment services on March 19, 2012. (Exhibit 1). On that same date, Mr. Freihage had to attend an orientation for a new job that would begin on March 27, 2012. He called IWD and left a message stating that he could not attend reemployment services because the new job orientation was mandatory. He did not attend the rescheduled reemployment services orientation. Mr. Freihage did attend the appointment for his newly acquired job, and has been employed in that position since that time. (Exhibit 4; Freihage testimony).

Ms. Runde acknowledged that Mr. Freihage left a message stating his unavailability for the March 19 reemployment services orientation. However, IWD policy only allows a claimant one rescheduled orientation. On March 26, 2012, IWD issued a decision finding Mr. Freihage was ineligible to receive unemployment insurance benefits as of March 18, 2012, because he had not established justifiable cause for failing to participate in reemployment services. (Exhibit 3; Runde testimony).

Mr. Williams testified that he made a choice between the reemployment services and the orientation for his new job. He felt that the new job was more important because he had been unemployed, and work had been hard to find. (Freihage testimony).

REASONING AND CONCLUSIONS OF LAW

IWD and the Department of Economic Development jointly provide a reemployment services program. 871 IAC 24.6(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. 871 IAC 24.6(3).

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. 871 IAC 24.6(6). Failure by the claimant to participate without justifiable cause shall disqualify the claimant from receiving benefits until the claimant

participates in reemployment services. “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.” 871 IAC 24.6(6)(a).

The preponderance of the evidence in the record established that Mr. Freihage failed to attend reemployment services after the appointment had been rescheduled and receiving a second notice. The record did, however, contain evidence of good cause for his failure to attend. A reasonable person would consider new employment to be important and significant for an unemployed claimant. In addition, Mr. Freihage called to try and reschedule. The IWD policy that only allows for one rescheduled reemployment services orientation does not have a basis in law. The applicable rules do recognize a good cause exception for a failure to attend reemployment services. These circumstances do constitute justifiable cause as defined in 871 IAC 24.6(6)(a), and the IWD decision must be reversed.

DECISION

IWD’s decision dated March 26, 2012, reference 01, finding Jeffrey Freihage ineligible for unemployment insurance benefits as of March 18, 2012, because he did not provide justifiable cause for failure to participate in reemployment services, is REVERSED. Mr. Freihage remains eligible for benefits for that period.

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