

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

Appeal Number: 17IWDUI263-65
OC: 12/4/16
Claimant: Appellant (1, 2, 6)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

JENNIFER LARUE
810 N. 11TH STREET
OSKALOOSA, IA 52577-2411

IOWA WORKFORCE DEVELOPMENT
RONEE SLAGLE & SANDRA TREJO

JONI BENSON, IWD
NICHOLAS OLIVENCIA, IWD
EMILY CHAFA, IWD

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)

July 19, 2017

(Decision Dated & Mailed)

STATEMENT OF THE CASE

Jennifer LaRue filed an appeal from three decisions issued by Iowa Workforce Development (IWD). In the first decision, dated January 23, 2017 (reference 02), IWD determined that LaRue was ineligible to receive unemployment insurance benefits effective January 8, 2017 because she failed to participate in a reemployment services orientation. In the second decision, dated February 23, 2017 (reference 03), IWD reinstated LaRue's eligibility to receive unemployment insurance benefits effective January 29, 2017 based on her participation in a reemployment services orientation. In the third decision, dated February 24, 2017 (reference 04), IWD determined that LaRue was overpaid in the amount of \$1,340 for three weeks between January 8, 2017 and January 28, 2017.

These cases were transmitted from IWD to the Department of Inspections and Appeals to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on June 1, 2017. On June 19, 2017, a telephone appeal hearing was held before Administrative Law Judge Laura Lockard. Appellant Jennifer LaRue appeared and presented testimony. IWD workforce advisor Sandra Trejo represented IWD and presented testimony. Exhibits A through D were submitted by IWD and admitted into the record as evidence.

ISSUES

1. Whether the Appellant filed a timely appeal of IWD's January 23, 2017 decision.
2. Whether IWD correctly determined that the Appellant did not establish justifiable cause for failing to participate in reemployment services.
3. Whether IWD correctly determined that the Appellant was eligible to receive unemployment insurance benefits effective January 29, 2017.
4. Whether IWD correctly determined that the Appellant was overpaid unemployment insurance benefits and, if so, whether the overpayment was correctly calculated.

FINDINGS OF FACT

Jennifer LaRue filed a claim for unemployment insurance benefits with an effective date of December 4, 2016. IWD sent a notice to LaRue informing her that she was required to attend a reemployment services (RES) orientation on January 9, 2017. LaRue did not appear for the RES orientation on January 9. On January 23, 2017, IWD issued a decision disqualifying LaRue from receiving unemployment insurance benefits effective January 8, 2017 due to her failure to report for the RES orientation on January 9. (Trejo testimony; Exh. B).

After LaRue received the January 23 decision, she called workforce advisor Sandra Trejo. LaRue explained to Trejo that she had been confused about the January 9 appointment, thinking that it was something to do with Vocational Rehabilitation, which she had just become involved with. LaRue called Vocational Rehabilitation, but they did not have any appointments for her in their records, so LaRue believed she was mistaken about a January 9 obligation. LaRue has issues with her memory that make it difficult for her to keep appointments straight. During their conversation, Trejo rescheduled the RES orientation for January 29, 2017. Trejo advised LaRue that if she attended the January 29 orientation, her benefits would be unlocked from that date forward. LaRue attended the January 29 orientation. (LaRue, Trejo testimony).

IWD issued a decision on February 23, 2017 reinstating benefits to LaRue effective January 29, 2017 due to her attendance at the RES orientation. On February 24, 2017, IWD issued a decision in which it determined that LaRue was overpaid in the amount of \$1,341 for benefits paid between January 8, 2017 and January 28, 2017, the time during which LaRue was disqualified. (Exh. C, D).

LaRue filed an appeal of IWD's decisions on February 27, 2017. In her appeal, she indicated that she had immediately contacted IWD after receiving the January 23 decision and rescheduled the RES orientation. (Exh. A).

REASONING AND CONCLUSIONS OF LAW

Timeliness of Appeal of January 23, 2017 Decision

Iowa Code section 96.6(2) requires that an appeal of a representative's decision must be filed by a claimant or other interested party "after notification or within ten calendar days after notification was mailed to the claimant's last known address." The Department's regulations provide that the effective date of the appeal is established by either the postmark on the appeal or the date stamp.¹ The Iowa Supreme Court has determined that timely appeal is both mandatory and jurisdictional.²

After LaRue received the January 23, 2017 decision, she rescheduled her RES orientation, but did not file an appeal. LaRue only appealed IWD's decision disqualifying her from benefits after she received the decision indicating that she had been overpaid for the time period that she was disqualified. At hearing, LaRue testified that she believed that once she attended the RES orientation her benefits would be restored back to January 8, 2017, the date of her initial disqualification. Trejo credibly testified, however, that she told LaRue that she would reinstate her benefits after the January 29 orientation going forward. While I believe that LaRue may have thought her benefits would be restored back to the original disqualification, that belief does not excuse LaRue from appealing the decision in a timely fashion.

LaRue's appeal was filed on February 24, 2017, well after the ten day period allowed to appeal the January 23, 2017 decision. Since the appeal was not filed timely for that decision, I do not have jurisdiction to consider whether IWD was correct in disqualifying LaRue from receiving unemployment insurance benefits due to her failure to attend the January 9 reemployment services orientation.

Reestablishing Eligibility Effective January 29, 2017 and Overpayment Decision

IWD 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

¹ 871 Iowa Administrative Code (IAC) 26.4(2).

² *Beardslee v. Iowa Dept. of Job Services*, 276 N.W.2d 373, 377 (Iowa 1979).

without justifiable cause disqualifies an individual from receiving benefits until he or she participates in the reemployment services.³

The only decisions from which LaRue timely appealed are the February 23 and February 24, 2017 decisions. IWD's February 23, 2017 decision reinstating eligibility for LaRue effective January 29, 2017 was correct. It is undisputed that LaRue attended a RES orientation on January 29, 2017. The applicable regulation provides that an individual is disqualified until she participates in the reemployment services, which LaRue did on January 29.

Under Iowa law, if an individual receives unemployment insurance benefits for which he or she is subsequently determined to be ineligible, the Department must recover those benefits even if the individual acted in good faith and is not otherwise at fault. The Department may recover the overpayment of benefits by requesting payment from the individual directly or by deducting the overpayment from any future benefits payable to the overpaid claimant.⁴

While LaRue was ineligible for unemployment insurance benefits from January 8 through January 29, 2017, IWD presented no evidence – apart from the decision under appeal itself – regarding the amount of benefits LaRue received during that time period. There is no evidence regarding her weekly benefit amount, nor any evidence of the amount of benefits received during the time period from January 8 through January 29. Under these circumstances, IWD has not proven that an overpayment in the amount of \$1,341 occurred from January 8 through January 29, 2017.

DECISION

Jennifer LaRue's appeal of the January 23, 2017 decision is dismissed as it was not timely filed.

IWD's February 23, 2017 decision reestablishing eligibility for unemployment insurance benefits effective January 29, 2017 is affirmed.

IWD's February 24, 2017 decision determining an overpayment in the amount of \$1,341 is reversed. No overpayment has been established.

IWD shall take any action necessary to implement this decision.

³ 871 Iowa Administrative Code (IAC) 24.6.

⁴ Iowa Code § 96.3(7)(a) (2017).