

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

Appeal Numbers: 12IWDUI486-487
OC: 01/15/12
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

TERRENCE BATES
770 N PLEASANT HILL BLVD, APT 11
PLEASANT HILL, IA 50327

IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS AND RECOVERY
IRMA LEWIS, INVESTIGATOR

JOSEPH WALSH, IWD
JONI BENSON, 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 written 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)

December 18, 2012
(Dated and Mailed)

Iowa Code section 96.6-2 – Timeliness
Iowa Code section 96.4-3 – Eligibility for Benefits

STATEMENT OF THE CASE

Claimant/Appellant Terrence Bates appealed two decisions issued by Respondent Iowa Workforce Development (“IWD”). In reference 05, dated August 23, 2012, IWD found Bates was ineligible to receive unemployment insurance benefits effective August 19, 2012 because he was notified to provide work searches at the time of “REA” and he did not provide the work searches. In reference 06, dated September 14, 2012, IWD found Bates was ineligible to receive unemployment insurance benefits between April 29, 2012

and August 4, 2012 because he failed to present work searches at the time of his initial interview with IWD.

On October 11, 2012, IWD transmitted the cases to the Department of Inspections and Appeals to schedule a contested case hearing. When IWD transmitted the cases, it mailed a copy of the administrative files to Bates. IWD later sent additional documents on October 17, 2012 to Bates and to the Department of Inspections and Appeals.

A contested case hearing was held on December 17, 2012. Bates did not appear despite receiving the Notice of Telephone Hearing, which provided instructions on how to participate in the hearing. Irma Lewis and Theresa Glick appeared and testified on behalf of IWD. Exhibits 1 through 9 were admitted into the record.

ISSUES

Whether the Claimant filed a timely appeal.

Whether IWD correctly determined the Claimant is ineligible to receive unemployment insurance benefits.

FINDINGS OF FACT

Bates has received unemployment insurance benefits in the past. Glick requested Bates provide information concerning his job contacts for reemployment services. Glick testified Bates submitted eight job contacts and he should have presented additional contacts. Glick referred the matter to Lewis for investigation.

Lewis mailed Bates a notice to report to provide his work searches for April 29, 2012 through August 18, 2012. Lewis testified she did not receive any response from Bates and his copy of the notice to report was not returned as undeliverable mail.

IWD issued the decision, reference 05, dated August 23, 2012, finding Bates was ineligible to receive unemployment insurance benefits effective August 19, 2012 because he was notified to provide work searches at the time of "REA" and he did not provide the work searches. The decision stated "[t]his decision becomes final unless an appeal is postmarked by 09-02-12 or received by the Iowa Workforce Development Appeals Section by that date." (Exhibit 6). Bates' appeal is dated September 19, 2012. Bates did not attend the hearing to explain why he did not file his appeal by September 2, 2012.

IWD issued another decision, reference 06, on September 14, 2012, finding Bates was ineligible to receive unemployment insurance benefits between April 29, 2012 and August 4, 2012 because he failed to present work searches at the time of his initial interview with IWD. The decision stated "[t]his decision becomes final unless an appeal is postmarked by 09-24-12 or received by the Iowa Workforce Development Appeals Section by that date." (Exhibit 3).

REASONING AND CONCLUSIONS OF LAW

I. Timeliness of Appeals

Iowa Code section 96.6(2) requires a claimant to file an appeal of a representative's decision "within ten calendar days after notification was mailed to the claimant's last known address." The Iowa Supreme Court has determined that timely appeal is both mandatory and jurisdictional.¹

IWD issued the decision, reference 05, dated August 23, 2012, finding Bates was ineligible to receive unemployment insurance benefits effective August 19, 2012 because he was notified to provide work searches at the time of "REA" and he did not provide the work searches. The decision stated "[t]his decision becomes final unless an appeal is postmarked by 09-02-12 or received by the Iowa Workforce Development Appeals Section by that date." (Exhibit 6). Bates' appeal is dated September 19, 2012. Bates did not attend the hearing to explain why he did not file his appeal by September 2, 2012. Bates' appeal of reference 05 was untimely.

IWD issued another decision, reference 06, on September 14, 2012, finding Bates was ineligible to receive unemployment insurance benefits between April 29, 2012 and August 4, 2012 because he failed to present work searches at the time of his initial interview with IWD. The decision stated "[t]his decision becomes final unless an appeal is postmarked by 09-24-12 or received by the Iowa Workforce Development Appeals Section by that date." (Exhibit 3). Bates' appeal is dated September 19, 2012. His appeal of reference 06 is timely.

II. Eligibility for Benefits

To be eligible to receive unemployment benefits, an unemployed individual must be able and available for work, and earnestly and actively seeking work.² As part of being available for work, the individual must follow the work search requirements.³ Merely registering with IWD does not establish an individual is earnestly and actively seeking work.⁴ It is essential the person diligently look for work.⁵ An individual is ineligible for benefits for any period for which IWD finds the individual has failed to make an earnest and active search for work.⁶

Lewis testified she mailed Bates a notice to report to produce his work searches from April 29, 2012 through August 18, 2012. Lewis reported Bates did not respond to her request. In his appeal letter Bates reported he has copies of his work searches, if needed. Bates did not appear at hearing to testify under oath, or produce the work searches. IWD's decision should be affirmed.

¹ *Beardslee v. Iowa Dep't of Job Servs.*, 276 N.W.2d 373, 377 (Iowa 1979).

² Iowa Code § 96.4(3) (2011).

³ *Id.*

⁴ 441 IAC 24.22(3).

⁵ *Id.*

⁶ *Id.*

DECISION

Bates' appeal of reference 05, dated August 23, 2012, finding he was ineligible to receive unemployment insurance benefits as of August 19, 2012 was untimely. Because the appeal is untimely, IWD's decision is affirmed. IWD correctly found Bates was ineligible to receive unemployment insurance benefits from April 29, 2012 through August 4, 2012, and its decision is affirmed.

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