

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

Appeal Number: 12IWDUI145

OC: 7/10/2011

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.

**KELLY O. SMITH
1124 PRAIRIE STREET
GRINNELL IA 50112-1317**

STATE CLEARLY

**IOWA WORKFORCE DEVELOPMENT
REEMP. SERVICES COORDINATOR
430 EAST GRAND AVE.
DES MOINES, IA 50309**

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

(Administrative Law Judge)

May 1, 2012

(Decision Dated & Mailed)

STATEMENT OF THE CASE

Kelly O. Smith filed an appeal from a decision issued by Iowa Workforce Development (the Department) dated February 24, 2012, reference 01. In this decision, the Department determined that Mr. Smith was ineligible to receive unemployment insurance benefits effective February 19, 2012 because he failed to participate in a reemployment and eligibility assessment as requested.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on March 23, 2012 to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on March 28, 2012. On April 23, 2012, a telephone appeal hearing was held before Administrative Law Judge John M. Priester. Reemployment and eligibility assessment specialist Sandy Krough represented the Department and presented testimony. Appellant Kelly Smith appeared and presented testimony. The administrative file was admitted into the record as evidence.

ISSUE

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

FINDINGS OF FACT

Kelly O. Smith filed a claim for unemployment insurance benefits with an effective date of July 10, 2011. On February 7, 2012, a notice was mailed to Mr. Smith scheduling him to attend a reemployment and eligibility assessment on February 23, 2012 at 9:00 AM.

Mr. Smith did not appear for the assessment February 23, 2012, nor did the Department receive any phone call or other contact from Mr. Smith requesting to reschedule the assessment. As a result, the Department issued a decision dated February 24, 2012 denying benefits to Mr. Smith effective February 19, 2012 based on his failure to attend the assessment.

Mr. Smith appealed the Department's decision, asserting in his appeal letter that he had not received any letter scheduling him to attend the February 19, 2012 assessment. At hearing, Mr. Pierce reiterated that he had not received any document from the Department indicating he was scheduled to attend a reemployment assessment on February 19, 2012. Had he received such a letter, Mr. Smith testified, he would have attended the appointment.

REASONING AND CONCLUSIONS OF LAW

Iowa Workforce Development 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 the Department 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 without justifiable cause disqualifies an individual from receiving benefits until he or she participates in the reemployment services.¹

Mr. Pierce presented credible testimony at hearing that he did not receive the Department's notice scheduling him for a reemployment assessment on October 13, 2011. The Department does not keep copies of the scheduling notices that are sent out to

¹ 871 Iowa Administrative Code (IAC) 24.6.

individuals regarding reemployment services assessments. The Department's representative testified at hearing that the Department's electronic records system reflects that a notice was mailed to Mr. Smith on February 7, 2012 at his current address. Whether or not notice was actually sent, I believed Mr. Smith's testimony that he did not receive the notice. Failure to receive notification of the reemployment services appointment constitutes justifiable cause for failing to participate in the assessment.

DECISION

Iowa Workforce Development's decision dated February 24, 2012, reference 01, is REVERSED. The Department shall take prompt steps to issue benefits to Mr. Smith retroactive to February 19, 2012, provided he was otherwise eligible. The Department shall take any further steps necessary to implement this decision.

jmp