

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

Appeal Number: 14IWDUI353

OC: 10/19/14

Claimant: Appellant (1)

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.**

STEPHANIE N. ESCOBEDO
2568 CASCADE LANE
IOWA CITY, IA 52246

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

IOWA WORKFORCE DEVELOPMENT
RE-EMPLOYMENT SERVICES
1000 E GRAND AVE.
DES MOINES, IA 50319

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.

LORI ADAMS
CAROL DUGGAN

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.

JONI BENSON, IWD

(Administrative Law Judge)

December 29, 2014

(Decision Dated & Mailed)

Iowa Code § 96.6(2) – Whether Claimant Filed a Timely Appeal
871—Iowa Administrative Code (IAC) 24.2(1)“e” & 24.11 – Reemployment and Eligibility Assessment
871—IAC 24.6(6) – Justifiable Cause for Failure to Report

STATEMENT OF THE CASE

The Claimant, Stephanie Escobedo, filed an appeal from a decision issued by Iowa Workforce Development (IWD) dated November 25, 2014 (reference 02). The decision informed Ms. Escobedo that IWD had determined that, because she failed to participate in a re-employment and eligibility assessment on November 20, 2014, she was ineligible to receive unemployment insurance benefits beginning November 16, 2014 “and continuing until you report for this assessment.” The Decision also stated, “This decision becomes final unless an appeal is postmarked by 12/05/14, 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.” December 5 was a Friday, and was not a legal holiday.

Upon receiving Ms. Escobedo’s appeal on December 9¹, IWD transmitted this matter to the Department of Inspections and Appeals on December 12, 2014 to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on December 15, setting a hearing date of December 26, 2014 at 3:00 p.m. Ms. Escobedo appeared personally and testified. Carol Duggan, a reemployment services coordinator, appeared and testified for IWD. Administrative notice was taken of documents in the administrative file.

ISSUES

The issues certified for appeal are whether the Claimant submitted a timely appeal from the November 25, 2014 IWD decision, and, if so, whether IWD correctly determined that the Claimant is ineligible to receive unemployment insurance benefits because the Claimant did not establish justifiable cause for failing to participate in reemployment services.

FINDINGS OF FACT

The administrative file includes a written “Notice to Report” sent to Ms. Escobedo dated and mailed on October 20, 2014, requiring her to report for a re-employment and eligibility assessment on October 30, 2014 at 10:15 a.m. at the Iowa City IowaWorks office. On the morning of October 30, Ms. Escobedo called Ms. Duggan and left a voice message, stating she wanted to reschedule, without giving a reason. Because all claimants are allowed to reschedule once, her request was accommodated. A new written “Rescheduled Initial Notice” was mailed to Ms. Escobedo on November 4, 2014, requiring her to report for the re-employment and eligibility assessment on November 20, 2014 at 9:45 a.m. at the Iowa City IowaWorks office.

On November 19, 2014, a Wednesday, Ms. Escobedo called Ms. Duggan and left a voice message that she could not attend the assessment on the next day because she was out of state for a family wedding. The flight information Ms. Escobedo provided from Delta Airlines shows that she had purchased a flight that left Iowa on November 20 at 6:30 a.m. and returned late morning November 23.

Because this request was for a second rescheduling of the assessment, IWD sent a Decision to Ms. Escobedo dated November 25, 2014, that she was ineligible to receive unemployment insurance benefits beginning November 16, 2014 “and continuing until you report for this assessment.” Ms. Escobedo is scheduled to make up the missed assessment on December 30. The November 25 Decision provided an appeal deadline of December 5. In her appeal letter, Ms. Escobedo provided a statement that she was out of the state for “a sudden family death,” so she did not receive the Decision until

¹ Ms. Escobedo originally faxed her appeal to IWD on December 6 to an incorrect fax number provided by the agency. However, had her appeal of December 6 been sent to the correct number, it would still have been untimely.

December 6, the date she returned to her home. She included with her appeal letter a written obituary of her grandmother, who died on November 27 and whose services were held on December 1 in Rochester, Minnesota.

REASONING AND CONCLUSIONS OF LAW

Timeliness of Appeal

It must first be determined whether Ms. Escobedo filed a timely appeal from the November 25 decision of IWD. Iowa Code § 96.6(2) requires that an appeal of an IWD 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 Iowa Supreme Court has determined that timely appeal is both mandatory and jurisdictional. *Beardslee v. Iowa Dept. of Job Services*, 276 N.W.2d 373, 377 (Iowa 1979). That is, if Ms. Escobedo did not show that she did not have a reasonable chance to file her appeal on or before December 5, this administrative tribunal cannot rule on the substantive issues.

It appears that Ms. Escobedo did not receive the Decision from IWD until December 6, the day after the appeal deadline. Thus, she did not have a reasonable opportunity to file a timely appeal. When she did receive the Decision, she immediately attempted to fax an appeal to IWD. Having determined that Ms. Escobedo's appeal was timely, the merits of the appeal must be examined.

Justifiable Cause to Not Participate in the Assessment

IWD, along with the Iowa Department of Economic Development, provided a reemployment services program. 871—Iowa Administrative Code (IAC) 24.6(1). An unemployment insurance claimant was required to participate in reemployment services when referred by IWD, unless the claimant established justifiable cause for failure to participate or the claimant had previously completed the training or services. 871—IAC 24.6(6).

"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."

Ultimately, Ms. Escobedo has not met her burden of proof regarding justifiable cause for missing the rescheduled assessment. But it must be made clear that this decision is not because of some policy of IWD. There is nothing in IWD's administrative rules and nothing in the Notices sent to claimants that puts claimants on notice that they get one and only one chance to reschedule an assessment. *Both* the original Notice to Report and the subsequent Rescheduled Initial Notice state as follows:

Failure to appear on the date and time listed below WILL result in the denial of unemployment insurance benefits.

If you are unable to keep this appointment, please contact the number

located at the top of the page.

[Emphases as in original documents.]

No, the reason Ms. Escobedo does not prevail is that it was unreasonable of her to wait until the day before the November 20 assessment to call to reschedule again. She was given the new date by written letter dated November 4. She did not state when she purchased her flight on November 20 – 23, but because the purpose for the trip was a family wedding, she likely had the flight purchased well before November 19. She said nothing about this trip being a last-minute decision.

So, while her appeal is deemed timely, IWD's decision is affirmed. Ms. Escobedo's benefits will not be unlocked until she has successfully attended the assessment.

DECISION

For the foregoing reasons, IWD's decision dated November 25, 2014 is **AFFIRMED**.

cjg