

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ELIAS L S THEDFORD
818 – 9TH AVE SW
FORT DODGE IA 50501

LITTLE WALLS LLC
PO BOX 167
RANDALL IA 50231-0167

Appeal Number: 05A-UI-00924-RT
OC: 12-05-04 R: 01
Claimant: Appellant (2)

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 Workforce Development. 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)

(Decision Dated & Mailed)

871 IAC 24.6 – Profiling for Re-employment Services

STATEMENT OF THE CASE:

The claimant, Elias L. S. Thedford, filed a timely appeal from an unemployment insurance decision dated January 24, 2005, reference 05, denying unemployment insurance benefits to him for one week from January 16, 2005 through January 22, 2005, because he did not establish justifiable cause for failing to participate in re-employment services. After due notice was issued, a telephone hearing was held on February 11, 2005 with the claimant participating. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. Department Exhibit 1 was admitted into evidence.

Although no employer or respondent should have been noticed, the employer, Little Walls LLC, was sent a copy of the notice of appeal and telephone hearing. The employer called in a telephone number for a witness, Gary Youngman. When the administrative law judge called Mr. Youngman at 10:03 a.m., the administrative law judge explained that the only issue before the administrative law judge was whether the claimant had participated in re-employment services, a program through Iowa Workforce Development. The administrative law judge explained to Mr. Youngman that the hearing was public and that he was welcome to sit in on the hearing and, if he had personal knowledge in regard to the issue, he could testify. The administrative law judge explained to Mr. Youngman, however, that the claimant's separation from employment by the employer was decided by a decision dated December 22, 2004, reference 02, allowing the claimant unemployment insurance benefits and this decision had not been appealed by the employer. If the employer wants to contest claimant's benefits, it would need to appeal this decision but the appeal would be late. The administrative law judge informed Mr. Youngman that he might have good cause for the delay in the filing of his appeal but that was the process he would need to take to contest the claimant's benefits. Mr. Youngman chose not participate in the hearing or sit in on the hearing and hung up.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Department Exhibit 1, the administrative law judge finds: The claimant, Elias L. S. Thedford, was separated from his employment with the employer, Little Walls LLC, on or about March 23, 2004. By decision dated December 22, 2004, reference 02, the claimant was allowed unemployment insurance benefits as a result of this separation. The employer did not appeal that decision. The claimant began receiving unemployment insurance benefits in a prior benefit year. The claimant then filed a claim for a new benefit year effective December 5, 2004 and began receiving benefits until benefit week ending January 22, 2005, when he was disqualified for that one week because he did not participate in re-employment services and did not establish justifiable cause for such failure. Records show that claimant has received unemployment insurance benefits for four additional weeks thereafter in the amount of \$207.00 each week for benefit weeks ending January 29, 2005 to February 19, 2005. Sometime prior to January 20, 2005, the claimant was mailed a notice that he was to participate in re-employment services orientation on January 20, 2005 as shown at Department Exhibit 1. However, the claimant did not participate or attend such re-employment services. The claimant did not participate in such re-employment services because he never received a copy of the notice. The claimant visits his local Iowa Workforce Development office in Fort Dodge, Iowa, almost everyday to look for jobs. When he learned that he was ineligible to receive unemployment insurance benefits because of his failure to participate in re-employment services, the claimant immediately said to schedule another one and he would attend it. However, he was told that another one could not be rescheduled because he had been denied benefits pursuant to the decision from which he now appeals. Nevertheless, as noted above, the claimant has received unemployment insurance benefits for four weeks after being ineligible to receive unemployment insurance benefits for benefit week ending January 22, 2005.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant failed to participate in re-employment services and, if so, whether he can demonstrate justifiable cause for such failure.

871 IAC 24.6 provides:

Profiling for reemployment services.

(1) The department of workforce development and the department of economic development will jointly provide a program which consists of profiling claimants and providing reemployment services.

(2) Profiling is a systematic procedure used to identify claimants who, because of certain characteristics, are determined to be permanently separated and most likely to exhaust benefits. Such claimants may be referred to reemployment services.

(3) Reemployment services may include, but are not limited to, the following:

- a. An assessment of the claimant's aptitude, work history and interest.
- b. Employment counseling regarding reemployment approaches and plans.
- c. Job search assistance and job placement services.
- d. Labor market information.
- e. Job search workshops or job clubs and referrals to employers.
- f. Résumé preparation.
- g. Other similar services.

(4) As part of the initial intake procedure, each claimant shall be required to provide the information necessary for profiling and evaluation of the likelihood of needing reemployment assistance.

(5) The referral of a claimant and the provision of reemployment services is subject to the availability of funding and limitations of the size of the classes.

(6) A claimant shall participate in reemployment services when referred by the department unless the claimant establishes justifiable cause for failure to participate or the claimant has previously completed such training or services. Failure by the claimant to participate without justifiable cause shall disqualify the claimant from the receipt of benefits until the claimant participates in the reemployment services.

- a. 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.
- b. Reserved.

This rule is intended to implement Iowa Code section 96.4(7).

The administrative law judge concludes that the claimant was sent a notice sometime prior to January 20, 2005 to participate in re-employment services on January 20, 2005. However, the administrative law judge concludes that the claimant failed to do so. Finally, the administrative law judge concludes that the claimant demonstrated justifiable cause for his failure to participate in re-employment services. The claimant credibly testified that he never received the notice for re-employment services. Since the claimant never received the notice for such re-employment services, the claimant could not have attended and this would be justifiable cause for his failure to do so. When the claimant learned of his ineligibility, he immediately contacted his local Workforce Development office in Fort Dodge, Iowa, and offered to attend new re-employment services but was told that one could not be scheduled because he had been denied benefits. Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant failed to participate in re-employment services but has demonstrated justifiable cause for his failure to do so and, as a consequence, the claimant is not ineligible to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant, provided he is otherwise eligible. Unemployment insurance benefits which have been denied to him for benefit week ending January 22, 2005, and for any other weeks because of his failure to attend re-employment services, shall be paid to the claimant.

DECISION:

The representative's decision of January 24, 2005, reference 05, is reversed. The claimant, Elias L. S. Thedford, is entitled to receive unemployment insurance benefits for benefit week ending January 22, 2005 and continuing thereafter, provided he is otherwise eligible, because he demonstrated justifiable cause for a failure to participate in re-employment services. Any benefits, including benefits for benefit week ending January 22, 2005, which were not paid to the claimant because of his failure to participate in re-employment services, shall be paid to the claimant.

tjc/kjf