

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**TAMI F. McELMURRY**  
**1251 RAILROAD STREET**  
**REINBECK, IA 50669-9683**

**IOWA WORKFORCE DEVELOPMENT**  
**REEMPLOYMENT SERVS. COORDINATOR**  
**SHANLYN SEIVERT**  
**430 EAST GRAND AVENUE**  
**DES MOINES IA 50319-0209**

DAN ANDERSON, IWD

**Appeal Number: 11IWDUI147**  
**OC: 12/12/10**  
**Claimant: Appellant (1)**

**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, 4<sup>TH</sup> 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.

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(Administrative Law Judge)

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June 30, 2011

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(Decision Dated & Mailed)

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871 IAC 24.26(6) – Reemployment Services

**STATEMENT OF THE CASE**

Claimant Tami McElmurry appealed from a decision issued by Iowa Workforce Development (“IWD”) dated April 7, 2011, reference 03. The decision determined Ms. McElmurry was not eligible to receive unemployment insurance benefits from April 3, 2011 through April 9, 2011, because she failed to provide justifiable cause for failing to participate in reemployment services.

IWD transmitted the case to the Department of Inspections and Appeals on June 10, 2011 to schedule a contested case hearing. A Notice of Telephone Hearing was issued on June 14, 2011, scheduling a hearing for June 29, 2011.

On June 29, 2011, this matter proceeded to a hearing before Administrative Law Judge Robert H. Wheeler. Claimant Tami McElmurry did not appear despite notice of hearing sent to her address of record. This is the same address that appears on her request for this appeal, and the same address to which IWD sent the decision under appeal. The notice of hearing has not been returned in the mail as undelivered. Deborah Hodges-Harmon appeared and testified on behalf of IWD. Exhibits 1 through 3 entered the record. The hearing proceeded in the Claimant's absence pursuant to Iowa Code 17A.12(3).

## **ISSUES**

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

## **FINDINGS OF FACT**

Ms. McElmurry was notified in writing to attend reemployment services on January 10, 2011. She did not attend. IWD sent Ms. McElmurry a second notice to attend reemployment services on February 2, 2011. She did not attend. Both of the notices sent to Ms. McElmurry contained language advising her that failure to attend could result in disqualification from benefits. Ms. Hodges-Harmon personally sent both of these notices. She testified that the notices went to the same address of record that appears on the Claimant's request for appeal. The notices to attend reemployment services were not returned in the mail to Ms. Hodges-Harmon. Ms. Hodges-Harmon also testified that she personally checked all of her telephone messages and logs and found no messages from the Claimant. (Hodges Harmon testimony).

IWD issued a decision finding Ms. McElmurry was ineligible to receive unemployment insurance benefits from April 3, 2011 through April 9, 2011 because she had not established justifiable cause for failing to participate in reemployment services. This appeal followed. (Exhibit 2).

The Claimant's appeal letter states that she did not receive notice of either instance of reemployment services. (Exhibit 1).

## **REASONING AND CONCLUSIONS OF LAW**

IWD and the Department of Economic Development jointly provide a reemployment services program. 871 IAC 24.6(1). Reemployment services may include: (1) an assessment of the claimant's aptitude, work history, and interest; (2) employment counseling; (3) job search and placement assistance; (4) labor market information; (5) job search workshops or job clubs and referrals to employers; (6) resume preparation; and (7) other similar services. 871 IAC 24.6(3).

A claimant is required to participate in reemployment services when referred by IWD, unless the claimant establishes justifiable cause for failure to participate or the claimant

has previously completed the training or services. 871 IAC 24.6(6). Failure by the claimant to participate without justifiable cause shall disqualify the claimant from receiving benefits until the claimant participates in reemployment services. "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).

The record established that Ms. McElmurry failed to attend reemployment services on two occasions. The record did not contain evidence of good cause for her failure to attend. Ms. McElmurry wrote that she did not receive either notice to attend. Although experience teaches that some items can be lost in the mail, the unexplained loss of two notices strains credibility. IWD did not receive either of the notices returned in the mail. Further, the Claimant did not attend the hearing to provide an explanation, also after notice mailed to the same address on the appeal request, and the same address where the decision under appeal was obviously received. These circumstances do not constitute justifiable cause as defined in 871 IAC 24.6(6)(a), and the IWD decision must be affirmed.

### **DECISION**

IWD's decision dated April 7, 2011, reference 03, is AFFIRMED.

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