

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

Appeal Number: 13IWDUI153
OC: 7/22/12
Claimant: Appellant (2)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

PAMELA OETKEN
14687 HIGHWAY 12
AKRON, IA 51001

IOWA WORKFORCE DEVELOPMENT
REEMP. SERVICES COORDINATOR &
FRAN CARPENTER

JOE WALSH, 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 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)

April 26, 2013

(Decision Dated & Mailed)

STATEMENT OF THE CASE

Pamela Oetken filed an appeal from a decision issued by Iowa Workforce Development (the Department) dated March 18, 2013 (reference 03). In this decision, the Department determined that Oetken was ineligible to receive unemployment insurance benefits effective March 10, 2013 because she failed to participate in a reemployment and eligibility assessment.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on April 1, 2013 to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on April 4, 2013. On April 19, 2013, a telephone appeal hearing was held before Administrative Law Judge Laura Lockard. Workforce advisor Fran Carpenter represented the Department and presented

testimony. Exhibits A through E were submitted by the Department and admitted into the record as evidence. Appellant Pamela Oetken appeared and presented testimony.

ISSUE

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

FINDINGS OF FACT

Pamela Oetken filed a claim for unemployment insurance benefits with an effective date of July 22, 2012. The Department sent a notice to Oetken scheduling her to attend a reemployment and eligibility assessment on February 28, 2013 at 10:15 AM. Oetken became ill during the night of February 27, 2013, with symptoms of vomiting and diarrhea. Oetken called the local office where the assessment was scheduled on February 28 to report her illness and to attempt to reschedule the assessment. (Exh. B; Oetken, Carpenter testimony).

On February 28, 2013, the Department mailed Oetken a second notice, rescheduling the reemployment assessment for March 13, 2013 at 10:15 AM. Oetken had been helping to take care of her grandchildren during the several week time period that is at issue in this matter. She had become ill with fever and chills and called the local office on March 12 to inform them that she would be unable to attend the reemployment assessment on March 13. Oetken asked to reschedule the assessment, but was told by workforce advisor Fran Carpenter that she could not reschedule again. (Exh. C; Oetken, Carpenter testimony).

On March 18, 2013, the Department issued a decision disqualifying Oetken from receiving unemployment insurance benefits effective March 10, 2013 because of failure to report for a reemployment and eligibility assessment. (Exh. E).

In the intervening time, Oetken has found part-time employment and is working for a company called Recover Health. She works three days a week and is hoping to get additional hours soon. (Oetken testimony).

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

Oetken provided credible testimony that she was ill to the point where it was not prudent for her to participate in reemployment services on both of the dates that her appointments were scheduled. Oetken called the local office promptly each time to report the illnesses and to attempt to reschedule. The fact that Oetken has obtained part-time employment in the interim is certainly good evidence that she understands the paramount importance of reemployment. A valid illness constitutes justifiable cause for failing to participate in the reemployment assessment process. Under these circumstances, Oetken has proven justifiable cause for her lack of participation. The Department’s decision disqualifying Oetken from receiving benefits must be reversed.

DECISION

Iowa Workforce Development’s decision dated March 18, 2013 (reference 03) is **REVERSED**. The Department shall take prompt steps to issue benefits to Pamela Oetken back to the date of disqualification, provided she was otherwise eligible. The Department shall take any additional action necessary to implement this decision.

¹ 871 Iowa Administrative Code (IAC) 24.6.