

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

LORI NESTEBY
2160 ELM, APT. 208
DUBUQUE, IA 52001

IOWA WORKFORCE DEVELOPMENT
REEMP. SERVICES COORDINATOR &
DEBBIE FISHER

JOE WALSH, IWD

Appeal Number: 12IWDUI279
OC: 4/19/09
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, 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)

September 28, 2012

(Decision Dated & Mailed)

STATEMENT OF THE CASE

Lori Nesteby filed an appeal from a decision issued by Iowa Workforce Development (the Department) dated June 1, 2012, reference 02. In this decision, the Department determined that Nesteby was ineligible to receive unemployment insurance benefits effective May 27, 2012 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 July 30, 2012 to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on July 31, 2012. On September 28, 2012, a telephone appeal hearing was held before Administrative Law Judge Laura Lockard. Workforce advisor Debbie Fisher represented the Department and presented testimony. Exhibits A through D were submitted by the Department and admitted into

the record as evidence. The Appellant was provided instructions to participate in the hearing, but did not call in to do so. The hearing was held in her absence.

ISSUE

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

FINDINGS OF FACT

Lori Nesteby filed a claim for unemployment insurance benefits with an effective date of April 19, 2009. (Exh. B). On May 8, 2012, the Department sent Nesteby a notice requiring her to report for a reemployment and eligibility assessment on May 29, 2012. Nesteby did not appear for the assessment and did not contact the Department to make any alternate arrangements. (Fisher testimony; Exh. C, D).

On June 1, 2012, the Department issued a decision disqualifying Nesteby from receiving unemployment insurance benefits effective May 27, 2012 because of her failure to report for the May 29 reemployment assessment. Nesteby filed an appeal of the Department's decision. In her appeal letter, Nesteby asserts that she resides at a "community living apartment complex" and that she did not receive the letter scheduling her to attend the reemployment assessment. Nesteby asserts that several people living at the same place have had mail and other items, like food, go missing over the past couple of months. (Exh. A, B).

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

Nesteby asserted in her appeal letter that she did not receive the notice scheduling her to attend the reemployment assessment. Nesteby did not appear at the hearing, therefore it was impossible to obtain any additional information regarding her claim that she did not receive the notice. The record does not contain any evidence, for example, regarding whether Nesteby's mailbox is locked, who has access to it, whether there are others in her household who regularly check mail, what the household members' practices are regarding delivering mail to one another, or any other

¹ 871 Iowa Administrative Code (IAC) 24.6.

information that could shed light on or lend credibility to her claim that she failed to receive the notice. On the other side, the Department has submitted a copy of the notice that was mailed to Nesteby's correct address on May 8, 2012. Under these circumstances, I cannot credit Nesteby's claim that she failed to receive the notice. Nesteby did not have justifiable cause for failing to participate in the reemployment assessment. The Department's decision must be affirmed.

I note that in order for Nesteby to begin receiving benefits again – provided she is otherwise eligible – she must contact the Department in order to make an appointment to attend the reemployment and eligibility assessment that she missed.

DECISION

Iowa Workforce Development's decision dated June 1, 2012, reference 02, is **AFFIRMED**. The Department shall take any action necessary to implement this decision.

lel