

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

JEFFREY AUSTIN
5702 OAKVIEW ST.
SHAWNEE, KS 66216

IOWA WORKFORCE DEVELOPMENT
REEMPLOYMENT SERVS. COORDINATOR
SHANLYN SEIVERT & BRYAN ANSON

JONI BENSON - IWD

Appeal Number: 13IWDUI396

OC: 6/16/13

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)

October 25, 2013

(Decision Dated & Mailed)

871 IAC 24.6(6) – Reemployment Services

STATEMENT OF THE CASE

Claimant/Appellant Jeffrey Austin appealed a decision issued by Iowa Workforce Development (“IWD”), dated August 12, 2013, reference 01, finding he was mailed a notice to report for reemployment and eligibility assessment on August 6, 2013 and since he did not report benefits were denied as of August 4, 2013.

On August 27, 2013, IWD transmitted the administrative file to the Department of Inspections and Appeals to schedule a contested case hearing. When IWD transmitted the file, it mailed a copy of the administrative file to Austin. On October 2, 2013, the Department of Inspections and Appeals sent out a Notice of Telephone Hearing, scheduling a contested case hearing for October 25, 2013.

On October 25 2013, a contested case hearing was held before Administrative Law Judge David Lindgren. Austin appeared and testified. Jeffrey Austin appeared and testified on behalf of IWD. IWD’s exhibits were admitted into the record.

ISSUES

Whether IWD correctly determined the claimant is ineligible to receive unemployment insurance benefits.

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

FINDINGS OF FACT

IWD scheduled Austin to attend a reemployment and eligibility assessment on August 6, 2013. Austin did not attend the appointment and IWD therefore issued a decision dated August 12, 2013, reference 01, finding that Anson did not report. It therefore disqualified him from benefits as of August 4, 2013.

At the hearing on appeal from this disqualification, Anson testified that the notice scheduling the appointment was sent on July 25. Prior to August 19, he is not aware that Austin made any attempt to contact IWD regarding his inability to make the appointment. The first contact he believes he received from Austin was on August 30 when Austin called and left a message. Anson testified that he returned the call at 1:10 p.m. on that day but had to leave a voice message. He also noted that IWD was notified of a change of address by Austin on September 20, 2013 reporting that he had moved to Kansas. Finally, Austin explained that IWD went to a new phone system in early

October and that consequently he is unable to check any call logs for calls that may have been made prior to that time.

Austin testified that he went to the Kansas City area to visit his parents and attend an anniversary dinner for his grandparents on August 2 or 3, and he ended up spending five to seven days there. He noted that on August 5 he called the number that was noted on the July 25 letter scheduling the eligibility assessment appointment. When he called that number (which Anson confirmed was his direct number), it went directly to voice mail and he left a message asking to reschedule the August 6 appointment. However, he never heard back from Anson. During the course of the hearing, Austin read from his cell phone's call log which indicated that he called this number at 3:02 p.m. on August 5.

The next communication Austin had from IWD was the August 12 decision finding him ineligible due to his failure to report for the assessment. It was shortly following this that he filed an appeal in writing. He then called the Des Moines IWD office to ask what he could do to remedy the situation and to schedule a new appointment. They indicated that the claim was locked at the local level and that he would have to contact the Davenport office, and they gave him a number to call.

Austin recalled that he called that number repeatedly over the course of the next two to three weeks. However, the number again went to a woman's voicemail repeatedly. He left messages asking what he could do, but never received a return call.

Then, at the end of August, Austin moved to the Kansas City area. On September 20, 2013, he reported his address change to IWD.

Toward the end of the hearing, Anson offered to Austin that he would be able to re-open his claim as of September 20, the date on which he reported his address change. Austin accepted this offer, and Anson indicated that he would take the steps necessary to accomplish this.

REASONING AND CONCLUSIONS OF LAW

IWD and the Department of Economic Development jointly provide a reemployment services program.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.²

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.³ Failure by the claimant to

¹ 871 IAC 24.6(1).

² *Id.* 24.6(3).

³ *Id.* 24.6(6).

participate without justifiable cause shall disqualify the claimant from receiving benefits until the claimant participates in reemployment services.⁴ “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.”⁵

I found Austin’s testimony regarding the many phone calls he made to IWD, including one the day before the appointment, to be credible. During the hearing, he recited from his call phone call records which indicated a specific time and date that he had called the number listed on the July 25 letter directing him to report for the REA on August 6. This shows he was aware of the need to contact IWD in advance to reschedule. The reason that he was in the Kansas City area was an important family reason and had been scheduled for some time. In light of his efforts to contact IWD ahead of time and to attempt to reschedule, in conjunction with the important family reason that he was then unavailable, I conclude justifiable cause has been established for his failure to attend the assessment.

DECISION

IWD erred in determining Austin did not establish justifiable cause for failing to participate in reemployment services, and its decision dated August 12, 2013, reference 01, is REVERSED. IWD should take any action necessary to comply with this decision.

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⁴ *Id.*

⁵ *Id.* 24.6(6)a.