

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

SHAUNA K. GERLIEB
5447 OBSERVATORY AVE SW
RIVERSIDE, IA 52327

**IOWA WORKFORCE DEVELOPMENT
REEMPLOYMENT SERVS. COORDINATOR
SHANLYN SEIVERT & KEVAN IRVINE**

JONI BENSON, IWD

Appeal Number: 12IWDUI650
OC: 09/16/12
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 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)

January 31, 2013

(Decision Dated & Mailed)

871—Iowa Administrative Code 24.2(1)“e,” 24.6(6) – Reemployment Services

STATEMENT OF THE CASE

The Appellant, Shauna K. Gerlieb, filed an appeal of a decision of the Iowa Workforce Development (IWD) dated November 27, 2012, reference 01, finding she was not eligible to receive unemployment insurance benefits effective November 11, 2012 because she failed to attend a scheduled Reemployment Services Orientation on November 14, 2012.

IWD transmitted the case to the Department of Inspections and Appeals on December 11, 2012 to schedule a contested case hearing.

A contested case hearing was held on January 30, 2013. Ms. Gerlieb appeared and testified. No representative of IWD appeared. Official notice was taken of the administrative file, which consists of the following: IWD’s notice of decision dated November 27, 2012; Ms. Gerlieb’s

appeal letter; the transmittal slip; a “Statement of Fact” from IWD with one sentence: “Claimant failed to attend RES Workshop.”

ISSUE

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

FINDINGS OF FACT

IWD’s notice of decision states that it scheduled Ms. Gerlieb to attend a reemployment services orientation on November 14, 2012. No such notice is in the administrative file. Ms. Gerlieb acknowledged that she received a letter from IWD regarding the orientation, but found it to be very confusing and she did not attend the orientation because she did not understand that she was obligated to do so. Because the administrative file made available to the undersigned does not include any such letter, the undersigned has no means by which to determine whether the letter was confusing or straightforward. The benefit of any doubt is given to Ms. Gerlieb on this issue.

Ms. Gerlieb further testified that when she received IWD’s notice of decision dated November 27, she immediately called to reschedule a reemployment services orientation. She attended an orientation on December 5. However, she states that there was some delay in re-starting her benefits. Because no one from IWD participated in the hearing and because IWD submitted nothing more than that which is documented in the Statement of the Case, the undersigned has no reason to not credit Ms. Gerlieb’s testimony.

As of December 12, 2012, Ms. Gerlieb states she is employed on a part-time basis. Because the employment is not fulltime, she continues to submit all required reports to IWD.

REASONING AND CONCLUSIONS OF LAW

IWD, along with the Iowa Department of Economic Development, provides a reemployment services program. 871—Iowa Administrative Code (IAC) 24.6(1). An unemployment insurance 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). “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.”

Ms. Gerlieb testified that she was unable to glean from a letter from IWD that she was required to attend a specific reemployment service program. The letter itself was not made available to the undersigned by IWD, and no representative of IWD appeared at this hearing. Ms. Gerlieb’s testimony is accepted at face value.

IWD’s attention is also drawn to the fact that the bald assertion that “Claimant failed to attend RES workshop” is not proof of anything. The assertion is IWD’s position; re-stating that position is not supporting evidence. Ms. Gerlieb took immediate appropriate action once she realized that she had been expected to attend an orientation session.

IWD's decision is reversed. IWD shall reinstate benefits to Ms. Gerlieb from November 11, calculating the proper amount by taking into account her recent part-time employment from December 12, 2012 to the present.

DECISION

IWD's decision dated November 27, 2012, reference 01, is REVERSED.

cjg