

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

**Appeal Number:** 17IWDUI280  
**OC:** 11/27/16  
**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, 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.

**DECISION OF THE ADMINISTRATIVE LAW JUDGE**

**RICHARD W. SCHAEFER**  
**5449 WEIDEN RD.**  
**WATERLOO, IA 50701-9198**

STATE CLEARLY

**IOWA WORKFORCE DEVELOPMENT  
REEMP. SERVICES COORDINATOR &  
DEPUTY MEGAN JENSEN**

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.

JONI BENSON- IWD  
NICHOLAS OLIVENCIA – IWD  
RONEE SLAGLE – IWD  
MEGAN JANSEN, IWD

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(Administrative Law Judge)

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June 28, 2017

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(Decision Dated & Mailed)

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**STATEMENT OF THE CASE**

Richard W. Schaefer filed an appeal from a decision issued by Iowa Workforce Development (the Department) dated January 6, 2017 (reference 03). In this decision, the Department determined that Schaefer was ineligible to receive unemployment insurance benefits effective January 1, 2017 because he failed to report for a reemployment and eligibility assessment on January 5, 2017.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on May 10, 2017 to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on June 2, 2017. On June 27, 2017, a telephone appeal hearing was held before Administrative Law Judge Kerry Anderson. Megan Jensen represented the Department and presented testimony. Ms. Jensen also submitted an appeal summary with attached exhibits. The summary and exhibits were

admitted into the record without objection. Appellant Richard Schaefer appeared and presented testimony. Official notice was taken of the remainder of the administrative file.

### ISSUE

Whether the Claimant filed a timely appeal.

Whether the Department correctly determined that Richard W. Schaefer is ineligible to receive unemployment insurance benefits because he failed to participate in reemployment services without justifiable cause.

### FINDINGS OF FACT

Richard Schaefer filed a claim for unemployment insurance benefits with an effective date of November 27, 2016. On December 22, 2016, Iowa Workforce Development sent Schaefer a “Re-Employment and Eligibility Assessment Program Notice to Report”. The notice instructed Schaefer to appear at the Waterloo IowaWorks office for a Re-employment and Eligibility Assessment on January 5, 2017 at 11:00 a.m. The letter stated:

**Failure to appear on the date and time listed below WILL result in the denial of unemployment insurance benefits.**

**If you are unable to keep this appointment, please contact the number located at the top of the page.**

(Exh. 1)(Bold and underlined emphasis in original).

On December 26, 2016, Schaefer injured his back and went to the emergency room where he was treated and released with instructions to return if his condition did not improve. The following day, with his pain worsening, Schaefer returned to the emergency room. He was admitted into the hospital that day. Surgery was recommended but could not be performed due to blood thinners Schaefer was taking. He remained hospitalized until the surgery was finally performed on January 4, 2017. He was eventually released from the hospital on January 7, 2017. (Schaefer testimony; Exh. 4)

Mr. Schaefer did not attend the assessment appointment scheduled for January 5, 2017 and there was no call to Megan Jensen, whose telephone number appeared on the notice to report, to explain why he could not attend. While Schaefer testified his wife telephoned someone at Workforce Development at some point to explain his circumstances he did not know what office she called or when. He related that she was told by whomever she spoke to that he should simply reapply for benefits once he had recuperated. Mr. Schaefer was also unable to recall if he received the notice to report before he injured himself. He did note, however, that his wife was attending to the mail during his hospitalization. (Appeal Summary; Jensen testimony; Schaefer testimony)

On January 6, 2017 Workforce Development issued its decision finding that Mr. Schaefer was ineligible to receive benefits based on his failure to attend the assessment appointment. The decision stated that Schaefer did not meet the availability requirements to qualify for benefits and benefits were therefore denied effective January 1, 2017 and continuing until such time as Schaefer reported for an assessment. The document further stated:

TO APPEAL THIS DECISION:  
THIS DECISION BECOMES FINAL UNLESS AN APEAL IS  
POSTMARKED BY 01/16/17, OR RECEIVED BY IOWA WORKFORCE  
DEVELOPMENT APPEAL SECTION BY THAT DATE. IF THIS DATE  
FALLS ON A SATURDAY, SUNDAY, OR LEGAL HOLIDAY THE APPEAL  
PERIOD IS EXTENDED TO THE NEXT WORKING DAY.

(Exh. 2A)

Mr. Schaefer does not recall receiving the decision but does not deny it might have been delivered to his home. Schaefer was discharged from the hospital to home the day after the decision was issued. (Schaefer testimony)

Mr. Schaefer testified credibly that he was not aware of the January 16<sup>th</sup> decision finding he was not eligible for benefits and the fact he was not receiving benefits did not tip him off because he was recuperating from his surgery and was not able or available to work. (Schaefer testimony)

Mr. Schaefer was released to return to work by his doctor on February 9, 2017. (Exh. 4) At some point thereafter, he reapplied for unemployment insurance benefits but was told he claim was “locked” due to his failure to attend the January 5, 2017 assessment appointment. Thereafter, on March 3, 2017, Schaefer contacted a Reemployment Advisor to schedule a new assessment appointment. The appointment was set for March 8, 2017, Schaefer attended, he was scheduled for required classes, and his claim was unlocked. During the appointment, Schaefer asked about the previous weeks during which he was not paid and he was instructed he could file an appeal. (Exh. 3, 3A)

On March 14, 2017, Schaefer filed this appeal. At hearing he noted that he only contests the denial of benefits from February 10, 2017, when he was released to return to work, through March 7, 2017, because he was unaware of the assessment appointment, unable to attend it, and unaware of the decision denying benefits based on his failure to attend. (Appeal)

### **REASONING AND CONCLUSIONS OF LAW**

The first issue to be determined is whether Mr. Schaefer’s appeal was timely:

Iowa Code section 96.6(2) requires that an appeal of a representative’s decision must be filed by a claimant or other interested party “after notification or within ten calendar days after notification was mailed to the claimant’s last known address.” The Department’s regulations provide that the effective date of the appeal is established by

either the postmark on the appeal or the date stamp.<sup>1</sup> The Iowa Supreme Court has determined that timely appeal is both mandatory and jurisdictional.<sup>2</sup>

The evidence demonstrates the Department's decision was issued on January 6, 2017 and was mailed to Mr. Schaefer's address of record. It specifically stated that any appeal had to be filed by January 16, 2017. Mr. Schaefer was discharged from the hospital to home on January 7, 2017. Even before his discharge, his wife was managing the couples' mail. Mr. Schaefer did not fax an appeal to the Department until March 14, 2017. While I am certain the Schaefer's had a lot on their minds during this period of time, the evidence clearly indicates Mr. Schaefer would have been home when the decision was delivered and that he did not file an appeal within the period allowed. Since the appeal was not filed timely, I do not have jurisdiction to consider whether the Department was correct in disqualifying Mr. Schaefer from receiving unemployment insurance benefits due to his failure to attend the reemployment services class.

### **DECISION**

The Appellant's appeal is dismissed because it was not timely filed.

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<sup>1</sup> 871 Iowa Administrative Code (IAC) 26.4(2).

<sup>2</sup> *Beardslee v. Iowa Dept. of Job Services*, 276 N.W.2d 373, 377 (Iowa 1979).