

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

JEANETTE L. MARES
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ONAWA, IA 51040-1009

IOWA WORKFORCE DEVELOPMENT
RE-EMPLOYMENT SERVICES
1000 E GRAND AVE.
DES MOINES, IA 50319

RONEE SLAGLE
BECKY GOODIER

JONI BENSON, IWD

Appeal Number: 17IWDUI205
OC: 09/18/16
Claimant: Appellant (1, 6)

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)

March 23, 2017

(Decision Dated & Mailed)

Iowa Code § 96.6(2) – Whether Claimant Filed a Timely Appeal
871—Iowa Administrative Code (IAC) 24.2(1)“e” & 24.11 – Reemployment and Eligibility Assessment
871—IAC 24.6(6) – Justifiable Cause for Failure to Report
871—Iowa Administrative Code 26.14(6) -- Default by Claimant

STATEMENT OF THE CASE

The Claimant, Jeanette Mares, filed an appeal from a decision issued by Iowa Workforce Development (IWD) dated December 6, 2016 (reference 08). The decision informed Ms. Mares that IWD had determined that, because she failed to participate in a re-employment services orientation on November 28, 2016, she was ineligible to receive unemployment insurance benefits beginning November 27, 2016 “and continuing until

you report for this orientation.” Since receiving that decision, the Claimant has participated in a re-employment orientation, so her benefits were restored as of December 11, 2016.

Upon receiving Ms. Mares’ written appeal, IWD transmitted this matter to the Department of Inspections and Appeals to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on February 1, 2017, setting a hearing date of February 15, 2017 at 9:30 a.m.

At the hearing on February 15, Ms. Mares appeared personally and testified. Becky Goodier appeared and testified for IWD. Administrative notice was taken of documents in the administrative file. These included the following:

1. IWD decisions dated 12/06/16 and 12/29/16.
2. Written appeal from the Appellant emailed to IWD 12/27/16.
3. Interviewer note, undated, stating issues are “did the claimant fail to report as directed by a department representative” and “did the claimant participate in re-employment services class?”
4. IWD computerized display locking the Appellant’s benefits.
5. Notes made by IWD workers DeLaO and Goodier.

After the hearing of February 15, 2017 was concluded, the undersigned discovered that she had neglected to have the parties address the certified issue of timeliness of Ms. Mares’ appeal. An order re-opening the record was sent to the parties setting a hearing for 9:30 a.m. on February 24, 2017, to solely address the issue of timeliness. At the hearing on February 24, Ms. Mares failed to appear. Later that same day, the Appellant left a voice message for the undersigned that a blizzard in western Iowa had knocked out phone service. She was found to have good cause for missing the hearing on February 24, 2017, so an order was issued re-setting the hearing to address the issue of timeliness for March 23, 2017 at 9:30.

At the hearing on March 23, 2017, only Ms. Goodier from IWD appeared. The Appellant failed to call and to participate in the hearing.

ISSUES

The issues certified for appeal are whether the Claimant submitted a timely appeal from the December 6, 2016 IWD decision, and, if so, whether IWD correctly determined that the Claimant is ineligible to receive unemployment insurance benefits because the Claimant did not establish justifiable cause for failing to participate in reemployment services. The sole period of ineligibility before this administrative tribunal is from November 27, 2016 to December 11, 2016.

FINDINGS OF FACT

The administrative record shows that on December 6, 2016, IWD mailed to Ms. Mares a decision that she was ineligible to receive unemployment insurance benefits because she had not shown good cause for missing a re-employment services orientation. The

decision stated, “This decision becomes final unless an appeal is postmarked by 12/16/16, or received by Iowa Workforce Development Appeal Section by that date.”

Ms. Mares’ emailed an appeal to IWD on December 27, 2016.

Earlier, at the hearing of February 15, 2017, it was established that the period of ineligibility for unemployment benefits was the two weeks from November 27, 2016 to December 11, 2016. The merits of the IWD decision dated December 6, 2016 cannot be addressed unless it is first determined that the Appellant filed a timely appeal from the December 6m 2016 decision.

REASONING AND CONCLUSIONS OF LAW

Iowa Code § 96.6(2) requires that an appeal of an IWD 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 Iowa Supreme Court has determined that timely appeal is both mandatory and jurisdictional. *Beardslee v. Iowa Dept. of Job Services*, 276 N.W.2d 373, 377 (Iowa 1979). That is, if this administrative tribunal finds that Ms. Mares could have appealed in a timely manner but failed to do so, this tribunal cannot rule on the substantive issues.

IWD administrative rule 871—IAC 26.14(6) states in part, “If the appealing party fails to appear, the presiding officer may decide the party is in default and dismiss the appeal.” In an IWD appeal, the Claimant bears the burden of proof to show that the agency’s decisions were wrong. Because Ms. Mares did not participate in the hearing regarding the timeliness of her appeal, she has not met her burden to show that her appeal was timely. This administrative tribunal finds that Ms. Mares is in default. Her appeal is dismissed.

DECISION

For the foregoing reasons, IWD’s decision dated December 6, 2016, is **AFFIRMED**.

cjg