

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**CATHERINE SAUNDERS**  
**PO BOX 833**  
**ANKENY, IA 50021**

**IOWA WORKFORCE DEVELOPMENT**  
**SHANLYN SEIVERT & LILLIE SIMPSON**

JOE WALSH, IWD  
DONNI ANDERSON, IWD  
JONI BENSON, IWD

**Appeal Numbers: 13IWDUI260-261**  
**OC: 05/13/12**  
**Claimant: Appellant (2), (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.

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)

July 12, 2013

---

(Decision Dated & Mailed)

---

871 IAC 24.2(1)e – Reemployment Services  
871 IAC 24.6(6) – Reemployment Services  
Iowa Code §96.3(7) – Recovery of Overpayment Benefits  
Iowa Code §96.6(2) – Timeliness of Appeals

### **STATEMENT OF THE CASE**

Claimant/Appellant Catherine Saunders appealed two decisions issued by Iowa Workforce Development (“IWD”). The first decision, dated March 14, 2013, reference 04, found that she was ineligible to receive unemployment insurance benefits as of March 3, 2013 because she failed to attend a reemployment services (RES) orientation on March 5, 2013. The second decision, dated May 9, 2013, reference 06, found that she was overpaid on her unemployment insurance claim in the amount of \$415.00 for the week between 03/03/2013 and 03/09/2013, when she failed to report as directed to the local IWD office in response to a notice that was mailed to her. Presumably, this was the notice for the RES orientation on March 5, 2013.

Catherine Saunders submitted an appeal, via fax, on May 20, 2013, to the IWD Appeals Section.

On or about May 22, 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 Catherine Saunders. On June 5, 2013, the Department of Inspections and Appeals sent out a Notice of Telephone Hearing, scheduling a contested case hearing on July 10, 2013 at 2:00 p.m.

A contested case hearing was held on July 10, 2013. Catherine Saunders did not appear for the hearing. The IWD representative, Lillie Simpson, and I waited more than five minutes for Ms. Saunders to join the call before proceeding with the hearing on the record. Exhibits 1 - 8 were admitted into the record for Case No. 13IWDUI260. Exhibits 1 - 3 were admitted into the record for Case No. 13IWDUI261. Lillie Simpson testified.

### **ISSUES**

1. Whether the Claimant filed a timely appeal.
2. Whether IWD correctly determined the claimant is ineligible to receive unemployment benefits.
3. Whether IWD correctly determined the claimant did not establish justifiable cause for failing to participate in reemployment services.
4. Whether IWD correctly determined that the claimant was overpaid unemployment benefits, and, if so, whether the overpayment was correctly calculated.

### **FINDINGS OF FACT**

IWD selected Catherine Saunders to participate in its reemployment services program. On February 8, 2013, IWD sent Catherine Saunders a notice to report to attend a reemployment services (RES) assessment appointment on March 5, 2013, with Lillie Simpson. (Exhibit 6, 3) Catherine Saunders did not attend the appointment on March 5, but came to an appointment on March 6, 2013, with another IWD worker named Lori. (Simpson testimony) According to Ms. Simpson, a computer glitch in IWD's system caused two notices of appointment to be sent to Catherine Saunders, scheduling appointments on two different dates, March 5 and March 6, with two different IWD workers, Lillie and Lori. (Simpson testimony) Ms. Simpson learned this information after Ms. Saunders failed to appear for the appointment on March 5, and after the notice of decision was issued on March 14. Ms. Simpson verified that Catherine Saunders appeared for the other appointment on March 6 with a different IWD worker named Lori. Ms. Simpson confirmed that Ms. Saunders complied with the requirements to participate in reemployment insurance services. (Simpson testimony)

IWD issued a decision on May 9, 2013, reference 06, finding that Catherine Saunders was overpaid on her unemployment insurance claim in the amount of \$415.00, for the week of 03/03/13 through 03/09/13. This decision stated that the overpayment resulted from her failure to report as directed to the local workforce center in response to the notice that was sent to her. She was disqualified by the decision dated 03/13/13. (Exhibit 2)

On May 20, 2013, Catherine Saunders submitted a handwritten letter on the Notice of decision form to the IWD Appeals Section via fax. (Exhibit 2-3) She stated, “This must be a clerical error. I did not fail to report for any scheduled meetings or orientations. I met on 3/6/13 at 11:30 am. I reported for an internal meeting during the time frame listed, as well as another orientation scheduled with Sue during that meeting on 4/15/13.” (Exhibit 2) The statements in Ms. Saunders’ appeal letter are consistent with Ms. Simpson’s testimony. Ms. Simpson testified that the overpayment claim was in error. She repeatedly stated that Ms. Saunders should not have an overpayment and that a computer glitch caused the error. (Simpson testimony)

## **REASONING AND CONCLUSIONS OF LAW**

### **Re-employment Services Requirements**

IWD and the Department of Economic Development jointly provide a reemployment services program.<sup>1</sup> 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.<sup>2</sup>

In order to maintain continuing eligibility for benefits, an individual is required to report to IWD as directed.<sup>3</sup> Specifically, 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.<sup>4</sup> Failure by the claimant to participate without justifiable cause shall disqualify the claimant from receiving benefits until the claimant participates in reemployment services.<sup>5</sup> “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.”<sup>6</sup>

The undisputed evidence shows that Catherine Saunders attended an assessment appointment on March 6, 2013. She attended another orientation on April 15, 2013. She participated in the required reemployment services activities.

Due to a clerical error or computer glitch, Ms. Saunders was scheduled for two appointments on two dates with two different IWD workers. She attended the second appointment, on March 6, instead of the first appointment on March 5. The decision dated March 14, 2013 was apparently issued in error.

### **Overpayment claim**

When IWD determines an individual who received unemployment benefits was ineligible to receive benefits, IWD must recoup the benefits received irrespective of

---

<sup>1</sup> 871 Iowa Administrative Code (IAC) 24.6(1).

<sup>2</sup> 871 IAC 24.6(3).

<sup>3</sup> 871 IAC 24.2(1)*e*.

<sup>4</sup> 871 IAC 24.6(6).

<sup>5</sup> 871 IAC 24.6(6).

<sup>6</sup> 871 IAC 24.6(6)*a*.

whether the individual acted in good faith and was not otherwise at fault.<sup>7</sup> IWD may, in its discretion, recover the overpayment either by having a sum equal to the overpayment deducted from any future benefits payable to the individual, or by having the individual pay IWD a sum equal to the overpayment.<sup>8</sup>

IWD issued a decision on May 9, 2013, reference 06, finding Saunders was overpaid \$415 for the week between 03/03/13 to 03/09/13, because she failed to report as directed for her RES assessment. (Exhibit 2) This overpayment claim was issued in error, based on the mistaken notion that Saunders did not appear and participate in the reemployment and eligibility assessment. The undisputed evidence shows that Saunders reported for her RES assessment on March 6, 2013. (Simpson testimony; Exhibit 2)

### **Timeliness of Appeals**

Iowa Code §96.6(2) requires a claimant to file an appeal of IWD's decision "within ten calendar days after notification was mailed to the claimant's last known address." The Iowa Supreme Court has determined that a timely appeal is both mandatory and jurisdictional.<sup>9</sup>

These administrative appeal files include two decisions. In the decision dated March 14, 2013, reference 04, IWD found Catherine Saunders was not eligible to receive unemployment insurance benefits as of 03/03/13 because she failed to attend a reemployment services assessment appointment on March 5, 2013. She did not attend that appointment, but attended another appointment on March 6, 2013. The record in this matter makes it clear that this decision was issued in error.

In the decision dated May 9, 2013, reference 06, IWD found Catherine Saunders was overpaid \$415 for the week between 03/03/13 and 03/09/13 because she failed to report for the RES assessment appointment on March 5, 2013. This decision includes this statement: "This decision becomes final unless an appeal is postmarked by 05/19/2013, 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." May 19, 2013 was a Sunday. The appeal deadline was May 20, 2013. Ms. Saunders submitted her appeal letter via fax on May 20, 2013. Her appeal from the overpayment decision was timely filed.

### **DECISION**

IWD's decision dated March 14, 2013, reference 04, is REVERSED, based on the undisputed evidence presented.

IWD's decision dated May 9, 2013, reference 06, finding Catherine Saunders received a \$415 overpayment, is REVERSED, based on the undisputed evidence presented.

egc

---

<sup>7</sup> Iowa Code § 96.3(7) (2011).

<sup>8</sup> Iowa Code § 96.3(7) (2011).

<sup>9</sup> *Beardslee v. Iowa Dep't of Job Servs.*, 276 N.W.2d 373, 377 (Iowa 1979).