

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

Appeal Number: 07-IWDUI-070
OC: 08/20/06
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

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DAN ANDERSON, IWD

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 written 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)

May 25, 2007

(Decision Dated & Mailed)

20 CFR 617.18 – TRA Benefits/Disqualifications
20 CFR 617.19 - TRA Benefits/Participation Requirements
Iowa Code Section 96.4-6a – Division Approved Training
871 IAC 24.23(30) – Availability Disqualifications/DAT
871 IAC 24.39 – Satisfactory Attendance/DAT

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development Department decision dated April 26, 2007, reference 03, which held the claimant was not eligible to receive unemployment insurance benefits or TRA payments for the week ending March 24, 2007, because he was not available for department approved training.

The hearing was held pursuant to due notice on May 21, 2007, by telephone conference call. The claimant and Maytag did not participate. Deb Shepherd, TRA Benefit Coordinator, participated on behalf of Iowa Workforce Development.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness, and having considered all of the evidence in the record, finds: The claimant filed a claim for unemployment benefits effective August 20, 2006. The claimant submitted an application for department-approved training to Iowa Workforce Development that was approved on December 13, 2006. The application was for the purpose of pursuing training as an Associate Pastor at the Faith Baptist Bible College, as a full-time student in a course beginning January 8, 2007 and ending on May 3, 2007.

As a full-time student, the claimant was required to attend daily classes, Monday through Friday. The department provided the claimant with notices on September 21, 2005, and July 21, 2006 that warned him as a full-time student he needed to attend his classes on a weekly basis in order to be eligible for benefits.

The claimant submitted to the department a reimbursement for mileage form that contained information regarding his classroom attendance for March 2007. The form showed that the claimant attended class on Monday and Friday of the week ending March 24, 2007, but he did not attend classes during the period from Tuesday through Thursday.

The department issued a decision that disqualified the claimant from receiving benefits for the week ending March 24, 2007, because he was not available and attending class for the majority of the week, as a full-time student.

The claimant appealed the department decision on the basis that the College excused his absences as he was providing care for his minor children while his wife was hospitalized due to the birth of their fourth child.

The claimant was not available when called for the hearing. The employer did not respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is eligible to receive unemployment or TRA benefits for the week ending March 24, 2007.

20 CFR 617.18 Disqualifications provides:

(a) State law applies. Except as stated in paragraph (b) of this section and 617.55(b), an individual shall not be paid TRA for any week of unemployment the individual is or would be disqualified to receive UI under the disqualification provisions of the applicable state law

(b) Disqualification of trainees

(2) Trainees ineligible. (i) An individual who, without justifiable cause, fails to begin participation in a training program which is approved under section 617.22(a), or ceases to participate in such training, or for whom a waiver is revoked pursuant to section 617.19(c), shall not be eligible for basic TRA, or any other payment under this part 617, for the week in which such failure, cessation, or revocation occurred, or any succeeding week thereafter until the week in which the individual begins or resumes participation in a training program that is approved under section 617.22(a).

(ii) For purposes of this section and other provisions of this Part 617, the following definitions shall be used:

(B) Cessation participation. A worker shall be determined to have ceased participation in a training program when the worker fails to attend all scheduled training classes and other training activities scheduled by the training institution in any week of the training without justifiable cause.

(C) Justifiable cause. For the purposes of paragraph (b)(2) of this section, the term "justifiable cause" means such reasons as would justify an individual's conduct, ... , including but not limited to reasons beyond the individual's control....

20 CFR 617.19 Requirement for participation in training.

(a) In general – (1) Basic requirement. (i) All individuals otherwise entitled to basic TRA, for all weeks, ... , must either be enrolled in or participating in a training program, ... , in order to be entitled to basic TRA payments for any such week (except for continuation of payments during scheduled breaks in training of 14 days or less

Iowa Code Section 96.4-6a provides:

6.a. An otherwise eligible individual shall not be denied benefits for any week because the individual is in training with the approval of the director

871 IAC 24.39 provides: Department-approved training.

(3). The claimant must show satisfactory attendance and progress in the training course....

871 IAC 24.23 Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

24.23(30) Failure to attend the major portion of the scheduled workweek for department approved training (emphasis added).

The administrative law judge concludes that the claimant is NOT eligible to receive the income benefit for the week ending March 24, 2007, because he did not attend training program classes for the majority of the full-time (student) scheduled week, as a requirement for participation in training pursuant to the law sections cited above. The claimant missed three of five scheduled classes for the week due to a personal reason that is not recognized as a justifiable cause according to the Code of Federal Regulations.

DECISION:

The decision of the representative dated April 26, 2007, reference 03, is AFFIRMED. The claimant is denied his income benefit for the week ending March 24, 2007, because he is not eligible for it due to a failure to attend his training program for the majority of the workweek.

rls