

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

Appeal Number: 13IWDUI252
OC: 05/09/13
Claimant: Appellant (6)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

SHEILA MILLER
426 E WALL AVENUE
DES MOINES, IA 50315

IOWA WORKFORCE DEVELOPMENT
REEMPLOYMENT SERVS. COORDINATOR
SHANLYN SEIVERT & LILLIE SIMPSON

TERESA K. HILLARY, IWD
CARLA DENNIS, 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 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)

July 30, 2013

(Decision Dated & Mailed)

871 IAC 24.2(1)(e) – Duty to report
871 IAC 24.6(6) – Reemployment Services

STATEMENT OF THE CASE

Claimant/Appellant Sheila Miller appealed a decision issued by Iowa Workforce Development (“IWD”), dated May 3, 2013, reference 04, finding she was ineligible to receive unemployment insurance benefits as of April 28, 2013 because IWD mailed her a notice to report to attend a reemployment and eligibility assessment on May 1, 2013 and she failed to report.¹

¹ The Administrative Code Section set out in the Transmittal Slip in connection with this appeal, 871 IAC 24.2(1)(e), deals with the duty to report. The more specific issue set out in the Notice of Telephone Hearing (and litigated by implicit agreement) is whether the Appellant showed justifiable cause for failing to participate in the reemployment services session as set out in 871 IAC 24.6(6)(a).

On May 30, 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 Miller.

A hearing was set to occur on July 2, 2013 and was continued at the Appellant's request. The hearing occurred on July 16, 2013 before Administrative Law Judge Ann E. Brenden. Lillie Simpson appeared and testified on behalf of IWD as did Sheila Miller. Exhibits 1 through 5 were admitted into the record.

ISSUES

- Whether the claimant filed a timely appeal.
- Whether IWD correctly determined that the claimant did not establish justifiable cause for failing to participate in reemployment services.
- Whether the Department correctly determined the claim is not eligible to receive unemployment insurance benefits.

FINDINGS OF FACT

IWD selected Miller to participate in its reemployment services program. By notice dated April 4, 2013, IWD advised Miller that she was to report for an Emergency Unemployment Compensation (EUC) Re-employment and Eligibility Assessment (REA) appointment on May 1, 2013 at 10:00 a.m. (Exhibit 3).

Because she wrote the date down wrong, Miller did not attend the May 1, 2013 EUC REA appointment. (Exhibit 1; Miller testimony).

On May 3, 2013, IWD sent Miller a decision that denied her benefits for failing to report as required by the April 4, 2013 letter. Benefits were denied as of April 28, 2013, to continue until she reported for the assessment. (Exhibit 2).

The May 3, 2013 Notice also advised Miller that the decision would become final "unless an appeal is postmarked by 05/13/13, or received by Iowa Workforce Development Appeal Section by that date." (Exhibit 2).

The Notice of Appeal was not received by the Appeals Section until May 17, 2013. (Exhibit 1). It reflects that Miller signed it the same date. It also indicates that the local office received it on May 17, 2013. The undersigned takes official notice of the fact that May 13, 2013 (the appeal deadline) fell on a Monday. As such, the rule extending deadlines for filing when the deadline falls on a weekend does not apply.

REASONING AND CONCLUSIONS OF LAW

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.² The Iowa Supreme Court has determined that timely appeal is both mandatory and jurisdictional.³

Miller's appeal was timely filed. The appeal document indicates that she signed it and presented it to the Department on the same day, May 17, 2013. No reasonable argument can be made that it was timely filed.

The decision that Miller appealed gave clear information about its impact; it informed her that her benefits were "denied as of 04/28/13 and continuing until you report for this assessment." It also informed her that the decision would become final unless they timely filed an appeal, postmarked by 5/13/13 or received by IWD Appeal Section by that date. It is clear that she effectuated neither, as she signed the appeal request on May 17, 2013. Since the appeal was not filed timely, the undersigned does not have jurisdiction to consider whether the Department was correct in disqualifying Miller from receiving unemployment insurance benefits due to her failure to attend reemployment services.

DECISION

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

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² 871 Iowa Administrative Code (IAC) 26.4(2).

³ *Beardslee v. Iowa Dept. of Job Services*, 276 N.W.2d 373, 377 (Iowa 1979).