

IOWA DEPARTMENT OF INSPECTIONS & APPEALS
Division of Administrative Hearings
Wallace State Office Building – Third Floor
502 East Ninth Street
Des Moines, Iowa 50319-8082

Appeal Number: 17IWDUI229-230
OC: 10/23/16
Claimant: Appellant (01, 03)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

STEVE FOLEY
4507 – 34TH STREET CT
BETTENDORF, IA 52722-7219

RONEE SLAGLE & TONY RINCON
JONI BENSON, IWD
NICHOLAS OLIVENCIA, IWD
EMILY CHAFA, UI APPEALS MANAGER

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)

April 28, 2017

(Dated and Mailed)

Iowa Code section 96.3(7) – Recovery of overpayment
871 Iowa Administrative Code (IAC) section 24.2(1)“e” – Responsibility to report
871 IAC section 24.6 – Reemployment services
871 IAC section 25.8 - Overpayment
871 IAC section 26.4(2) – Timely appeal

STATEMENT OF THE CASE

On February 8, 2017, Claimant/Appellant Steve Foley filed two appeals: the first, from a decision issued by Iowa Workforce Development (“IWD”) dated December 16, 2016, reference 01, finding that he was ineligible to receive unemployment insurance benefits (UIB) effective December 11, 2016 because he failed to report for a reemployment

services orientation on December 14, 2016; and the second, from a decision issued by IWD dated January 31, 2017, reference 03, finding that he received a UIB overpayment (\$282.00) from December 11, 2016 to December 17, 2016 because he was disqualified.

[Note: On December 21, 2016, IWD reportedly issued a decision dated December 21, 2016 (reference 02?) reportedly disqualifying Foley from receipt of UIB. Neither party submitted a copy of the decision for inclusion in the record.]

On February 28, 2017, IWD transmitted the cases to the Iowa Department of Inspections and Appeals (DIA), Division of Administrative Hearings (administrative hearings) to schedule a contested case hearing. On February 22, 2017, IWD mailed copies of the administrative files to Foley.

On March 29, 2017, Administrative Law Judge Charles B. Tarvin initially convened the hearing. Foley participated in the hearing. Tony Rincon, an IWD advisor, participated in the hearing.

On April 4, 2017, the judge issued an *Order to Reconvene Hearing* on April 14, 2017 so that Foley received timely and adequate notice of the issue as to whether Foley timely filed the appeal(s). On April 14, 2017 at 9:05 a.m., the judge reconvened the hearing. Rincon participated in the reconvened hearing. At the conclusion of the reconvened hearing, the judge closed the record.

Later on the morning of April 14, 2017, Foley contacted the judge. Foley suggested that although he planned to participate in the reconvened hearing, Foley unexpectedly had a work conflict and was unable to connect timely for the reconvened hearing. The judge declined to reopen the record. (official notice)

The judge admitted the IWD decision letters, appeal letter, IWD statement of fact/decision worksheet, IWD workshop registration, IWD notices to report, UI claimant handbook (p. 21), UIB pay history, IWD customer transcript, IWD decision overpayment worksheet, IWD reported wages, and digital recordings into the record.

ISSUES

1. Whether the claimant timely filed the appeal(s).
2. Whether IWD correctly determined that the claimant was ineligible to receive UIB.
3. Whether IWD correctly determined that the claimant did not establish justifiable cause for failing to participate in reemployment services.
4. Whether IWD correctly established and requested repayment of a UIB overpayment.

FINDINGS OF FACT

Foley's family consisted of Foley, Foley's spouse, and their three children. (appeal letter)

On October 23, 2016, Foley filed a claim for unemployment benefits (UIB). IWD approved Foley's claim in the amount of \$506.00 per week. (UIB pay history)

As a recipient of UIB, Foley was responsible for participating in reemployment services. (testimony of Rincon)

On November 15, 2016, IWD mailed a notice to report to Foley scheduling Foley for a reemployment services orientation on November 30, 2016 from 12:45 – 16:00. Failure to appear will result in the denial of UIB. IWD mailed the notice to report to Foley at Foley's current address (4- 3-, B-, Iowa). (notice to report)

On the morning of November 30, 2016, Foley contacted IWD to report that Foley would not be attending the orientation because the orientation conflicted with a scheduled job interview. (appeal letter, testimony of Rincon)

On November 30, 2016, IWD mailed a second notice to report to Foley rescheduling Foley for a reemployment services orientation on December 7, 2016 from 12:45 – 16:00. Failure to appear will result in the denial of UIB. IWD mailed the notice to report to Foley at Foley's current address (4- 3-, B-, Iowa). (notice to report)

On December 6, 2016, Foley contacted IWD to report that Foley would not be attending the orientation. (appeal letter, testimony of Rincon)

On December 7, 2016, IWD issued a workshop registration to Foley rescheduling Foley for a reemployment services orientation on December 14, 2016 from 12:45 – 16:00. IWD mailed the workshop registration to Foley at Foley's current address (4- 3-, B-, Iowa). (workshop registration)

On December 13, 2016, Foley contacted IWD to report that Foley would not be attending the orientation because he had a work conflict. (appeal letter, testimony of Rincon)

On December 16, 2016, IWD issued a decision (ref 01) finding that Foley was ineligible to receive UIB effective December 11, 2016 because Foley failed to report for a reemployment services orientation on December 14, 2016. The decision would become final unless Foley submitted or postmarked an appeal on or before December 26, 2016. If the decision became final, then it may result in an overpayment that Foley will be required to repay. (IWD decision letter)

For the week of December 11-17, 2016, IWD made a payment (\$282.00) of UIB to Foley. (UIB pay history)

On January 31, 2017, IWD issued a decision (ref 03) finding that Foley received a UIB overpayment (\$282.00) from December 11, 2016 to December 17, 2016 because Foley previously was disqualified from receipt of UIB. (decision letter)

REASONING AND CONCLUSIONS OF LAW

IWD and Department of Economic Development jointly provide a re-employment services program. 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. In order to maintain continuing eligibility for unemployment insurance benefits, an individual is required to report when directed to do so by a representative from IWD. See 871 Iowa Administrative Code (IAC) section 24.6(1).

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 previously completed the training or services. See 871 IAC section 24.2(1)"e". Failure by the claimant to participate without justifiable cause shall disqualify the claimant from receiving benefits until the claimant participates in reemployment services. 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. See 871 IAC section 24.6(6)"a".

Timely appeal

An appeal from an initial decision concerning the allowance or denial of benefits shall be filed, by mail, facsimile or in person, not later than ten calendar days, as determined by the postmark or the date stamp, after the decision was mailed to the party at its last-known address. See 871 IAC section 26.4(2).

In the case at issue, on October 23, 2016, Foley filed a UIB claim. IWD approved the claim. While Foley remained unemployed or employed and otherwise eligible, Foley was entitled to weekly UIB.

IWD provided proper written notice to Foley of its scheduling of three appointments (November 30, 2016, December 7, 2016, and December 14, 2016) for Foley to attend a reemployment services orientation. For each of the first two scheduled appointments, Foley contacted IWD prior to the appointment and reported that Foley would be unable to attend the reemployment services orientation because it conflicted with a job interview. For the third scheduled appointment, Foley contacted IWD prior to the appointment and reported that Foley would be unable to attend the reemployment services orientation because he was starting a new job.

Foley asserted that he had justifiable cause for failing to attend each of the scheduled appointments with IWD. Foley was making a concerted effort to find a job, culminating in his finding a new job in the middle of December 2016. Foley prioritized his job search

when deciding whether to attend a job interview or to attend a reemployment services orientation.

On December 16, 2016, IWD issued a decision (ref 01) finding that Foley was ineligible to receive UIB effective December 11, 2016 because Foley failed to report for a reemployment services orientation on December 14, 2016. The decision would become final unless Foley submitted or postmarked an appeal on or before December 26, 2016. If the decision became final, then it may result in an overpayment that Foley will be required to repay.

Since Foley failed to file his appeal on or before December 26, 2016, it is ORDERED that Foley's appeal of the IWD decision dated December 16, 2016, reference 01, be dismissed. 871 IAC section 26.4(2).

Overpayment

Under Iowa law, if a claimant receives unemployment insurance benefits for which he or he is subsequently determined to be ineligible, IWD must recover those benefits even if the claimant acted in good faith and is not otherwise at fault. IWD may recover the overpayment of benefits by requesting payment from the claimant directly or by deducting the overpayment from any future benefits payable to the overpaid claimant. See 871 IAC section 25.8.

In the case at issue, IWD issued UIB of \$282.00 to Foley for the week of December 11-17, 2016.

As noted previously, Foley failed timely to file an appeal of IWD's December 16, 2016 decision (ref 01). When determining whether IWD correctly established a claim for an alleged overpayment of UIB received by Foley for the week of December 11-17, 2016, the judge need not decide whether Foley had justifiable cause for failing to attend the scheduled reemployment services orientation on December 14, 2016.

The action of IWD establishing and requesting repayment of an overpayment (\$282.00) received by Foley for the week of December 11-17, 2016 is AFFIRMED. 871 IAC section 25.8.

DECISION

It is ORDERED that Foley's appeal of the IWD decision dated December 16, 2016, reference 01, be dismissed as untimely. The IWD decision dated January 31, 2017, reference 03, is AFFIRMED.

CBT