

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

Appeal Number: 13IWDUI425
OC: 7/21/13
Claimant: Appellant

DECISION OF THE ADMINISTRATIVE LAW JUDGE

RAYMOND THROCKMORTON
328 GRANT STREET
MURRAY, IA 50174

IOWA WORKFORCE DEVELOPMENT
REEMPLOYMENT SERVS. COORDINATOR
SHARLYN SEIVERT & HEATHER SEMKE

TERESA K. HILLARY, IWD
JONI BENSON, 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)

January 21, 2014

(Decision Dated & Mailed)

STATEMENT OF THE CASE

Raymond Throckmorton (Throckmorton) filed an appeal from a decision issued by Iowa Workforce Development (the Department) finding that Throckmorton was ineligible to receive unemployment insurance benefits because he failed to participate in reemployment services. The case was transmitted from Workforce Development to the Department of Inspections and Appeals to schedule a contested case hearing.

A Notice of Telephone Hearing was mailed to all parties on September 20, 2013. On October 4, 2013, a telephone appeal hearing was held before Administrative Law Judge Martin Francis. Workforce advisor Heather Semke (Semke) represented the Department and offered testimony. The hearing file was offered by the Department which included the notice of hearing, the transmittal slip, a claimant account printout,

Throckmorton's written letter of appeal, and the unemployment insurance decision subject of the appeal. The files contents were admitted into the record.

Prior to the hearing the Department forwarded by transmittal slip with an attached copy of a Workforce Development Statement Of Fact/Decision Worksheet; a Reemployment Services (RES) notice for Throckmorton to attend a RES Orientation on August 23, 2013; a notice for Throckmorton to attend a NCRC Work Readiness workshop on August 29, 2013; a National Career Readiness Certificate (NCRC) form; and selected notes from Throckmorton's file. Those documents were also admitted.

Throckmorton was provided instructions to participate in the hearing, but did not call in to do so. The hearing was held in his absence and was entered on the documents in evidence and the testimony of Semke.

ISSUE

Whether the Department correctly determined Throckmorton was ineligible to receive unemployment insurance benefits.

Whether the Department correctly determined Throckmorton did not establish justifiable cause for failing to participate in reemployment services.

FINDINGS OF FACT

Throckmorton filed a claim for unemployment insurance benefits with an effective date of July 21, 2013. On August 16, 2013, Throckmorton was scheduled for a REA (Reemployment Eligibility and Assessment) appointment at the Creston Workforce Center. There he provided the work search requirement and was set up for the NCRC (National Career Readiness Certificate) and scheduled for RES (Reemployment Services). He was given a letter directing him to attend an RES Orientation at the Creston Department office on August 23, 2013. The letter also informed him that failure to appear for RES would result in a loss of unemployment insurance benefits. Throckmorton signed a form informing him that if he failed to complete the NCRC within the time frame agreed it would result in the loss of unemployment insurance benefits. He was also given a workshop registration for an NCRC Work Readiness seminar he was to attend on August 29, 2013. (Testimony of Semke; Claimant account printout; RES Orientation Notice; NCRC workshop registration; NCRC agreement form)

Throckmorton did not attend the RES Orientation appointment. He called after the time of the appointment on that day and told Semke that his ride had fallen through just before the time he was to leave. When he informed Semke he had no transportation of his own and few options in his small town, Semke informed him that would be an issue as to his eligibility for unemployment insurance benefits since he must be able and available to accept employment. She told him that was not something that could be forgiven and he would have to take care of that. Semke set Throckmorton for a second RES appointment. Throckmorton did not attend the second RES appointment or the August 29, 2013, NCRC work readiness workshop. Throckmorton

did not call before missing either appointment and has not called since. (Testimony of Semke; RES Orientation Notice; NCRC workshop registration)

On August 26, 2013, the Department issued a decision disqualifying Throckmorton from receiving unemployment insurance benefits effective August 18, 2013, because of his failure to report for the appointment on August 23, 2013. The decision informed Throckmorton the decision would become final unless Throckmorton sent an appeal postmarked by September 5, 2013, or it was delivered to the Department's Appeal Section by that date. (Department decision of August 26, 2013)

Throckmorton appealed the decision by letter received by the Department on September 3, 2013. In his appeal letter Throckmorton wrote he did not attend the RES appointment because his ride fell through an hour before the appointment and added he had no driver's license and lived more than twenty-five miles away. Throckmorton also wrote that he had called ahead of time to reschedule at a later date. (Throckmorton appeal letter)

REASONING AND CONCLUSIONS OF LAW

Iowa Workforce Development and the Iowa Department of Economic Development provide a program that offers reemployment services to individuals receiving unemployment insurance benefits. The services offered include aptitude assessments, employment counseling, job searching assistance, and resume preparation, among other things. Once the Department selects an individual for reemployment services, that individual must participate in those services unless he or she establishes justifiable cause for failure to participate or has previously completed such training. Justifiable cause 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." Failure to participate without justifiable cause disqualifies an individual from receiving benefits until he or she participates in the reemployment services.¹

On the evidence in the record it is reasonable to find Throckmorton did not provide justifiable cause for missing the appointment. There is no reason to doubt the truth of Throckmorton statements in his call to Semke on the phone the day of his RES Orientation or the contents of his letter which both indicate the person he was relying on for transportation was unable to give him the ride promised but that very reason also indicates he does not meet the "able and available" requirement to qualify for benefits. As Semke told him the fact he does not have access to reliable transportation, and by his letter does not have a driver's license, is not a forgivable excuse.

It is also reasonable to find that the Department decision to deny Throckmorton unemployment insurance benefits because he did not provide justifiable excuse for failing to attend a qualifying event was proper. The Department's decision must be sustained.

¹ 871 Iowa Administrative Code (IAC) 24.6.

DECISION

IT IS THEREFORE ORDERED that Iowa Workforce Development's decision dated August 26, 2013, denying the Claimant benefits is **SUSTAINED**. The Department shall take any additional action necessary to implement this decision.