

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

Appeal Number: 12IWDUI371
OC: 3/25/12
Claimant: Appellant (2)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

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.

JORDAN FOUTS
7530 NE 108TH PLACE
BONDURANT, IA 50035-1108

STATE CLEARLY

IOWA WORKFORCE DEVELOPMENT
REEMP. SERVICES COORDINATOR &
KIMBERLY WILHELM

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.

JOE WALSH, IWD

(Administrative Law Judge)

October 22, 2012

(Decision Dated & Mailed)

STATEMENT OF THE CASE

Jordan Fouts filed an appeal from a decision issued by Iowa Workforce Development (the Department) dated May 24, 2012, reference 01. In this decision, the Department determined that Fouts was ineligible to receive unemployment insurance benefits effective April 29, 2012 because he failed to participate in a reemployment and eligibility assessment.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on August 31, 2012 to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on September 11, 2012.¹ On

¹ The September 11, 2012 Notice of Telephone Hearing erroneously listed the hearing time as 1:00 A.M. on October 19, 2012, rather than 1:00 P.M. An Amended Notice of Telephone Hearing was mailed on October 1, 2012 with the correct time of 1:00 P.M.

October 19, 2012, a telephone appeal hearing was held before Administrative Law Judge Laura Lockard. Workforce advisor Kimberly Wilhelm represented the Department and presented testimony. Exhibits A through D were submitted by the Department and admitted into the record as evidence. The Appellant was provided instructions to participate in the hearing, but did not call in to do so. The hearing was held in his absence.

ISSUE

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

FINDINGS OF FACT

Jordan Fouts filed a claim for unemployment insurance benefits with an effective date of March 25, 2012. (Exh. B). On April 25, 2012, the Department mailed Fouts a notice to report for a reemployment eligibility assessment scheduled for May 3, 2012. Fouts did not attend the May 3, 2012 assessment. (Wilhelm testimony).

On May 24, 2012, the Department issued a decision disqualifying Fouts from receiving unemployment insurance benefits effective April 29, 2012 because of his failure to report for the May 30 reemployment assessment.² Fouts filed an appeal of the Department's decision. In his appeal letter, Fouts asserts that he received the notice of the assessment three days prior to the date for which it was scheduled and that the assessment conflicted with an exam scheduled for a class at Des Moines Area Community College. Fouts asserts that he attempted to call to reschedule the assessment, but the voicemail box associated with the telephone number was full up until the date of his assessment. (Exh. A, B).

At hearing, Kimberly Wilhelm testified that she did not dispute Fouts' contention that her voicemail box might have been full on the dates indicated. Wilhelm testified that at that time her voicemail box only accepted ten messages before giving callers a message that it was full. Wilhelm testified that her voicemail box routinely filled up approximately twice per day with the ten message limit. (Wilhelm testimony).

Wilhelm also testified that she would have considered a previously scheduled exam to constitute justifiable cause for failing to participate in the reemployment assessment. Had Fouts been able to contact her, Wilhelm testified, she would have rescheduled the assessment without disqualifying Fouts from receiving benefits. (Wilhelm testimony).

² The decision actually states that Fouts failed to report for a reemployment and eligibility assessment on May 30, 2012, a date that had not yet occurred when the notice was mailed. At hearing, workforce advisor Kimberly Wilhelm indicated that this was a data entry error; the assessment was actually scheduled for May 3. (Exh. B; Wilhelm testimony).

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.³

Fouts credibly asserted in his appeal letter that he attempted to contact Wilhelm to reschedule the assessment, which conflicted with a college exam that had been previously scheduled. Wilhelm acknowledged at hearing that Fouts’ assertion that her voicemail box was full was likely correct. Wilhelm also testified that she believed Fouts’ asserted reason for missing the assessment constituted justifiable cause. Under these circumstances, the Department’s decision disqualifying Fouts from receiving benefits effective April 29, 2012 must be reversed. Fouts had justifiable cause for failing to attend the assessment and made reasonable efforts to contact the Department prior to the date of the assessment.

DECISION

Iowa Workforce Development’s decision dated May 24, 2012, reference 01, is **REVERSED**. The Department shall take prompt steps to issue benefits to Jordan Fouts back to the date of disqualification, provided he was otherwise eligible. The Department shall take any additional action necessary to implement this decision.

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³ 871 Iowa Administrative Code (IAC) 24.6.