

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ROBERT T PITTS
Claimant

HY-VEE INC
Employer

APPEAL 20A-UI-02678-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/01/20
Claimant: Appellant (6R)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

Claimant filed an appeal from the March 19, 2020, (reference 01) unemployment insurance decision that concluded claimant was not eligible for unemployment insurance benefits. Iowa Workforce Development mailed a hearing notice to the claimant and employer for a telephone hearing scheduled for April 29, 2020, at 10:00 a.m. Claimant did not provide a telephone number to the Appeals Bureau prior to the time of the hearing, so no hearing was held. The administrative law judge took official notice of the hearing control screen which shows claimant did not provide a telephone number to the Appeals Bureau prior to the hearing.

ISSUE:

Should the appeal be dismissed based on claimant's failure to appear and participate?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant and employer were properly notified of the scheduled hearing for this appeal. The claimant did not provide the Appeals Bureau with a telephone number for the scheduled hearing or request a postponement of the hearing as required by the hearing notice.

The hearing notice instruction specifically advises parties of the date and time of the hearing. It also states:

IMPORTANT NOTICE!

YOU MUST PROVIDE YOUR PHONE NUMBER TO THE APPEALS BUREAU
AS SOON AS POSSIBLE. If you do not follow these instructions, the judge will
not call you for the hearing. You must also provide the name(s) and phone
number(s) of any witnesses to the Appeals Bureau.

The back page of the hearing notice provides further instruction and warning:

Failure to Participate or Register for Appeal Hearing

If you do not participate in the hearing, the judge may dismiss the appeal or issue a decision without considering your evidence. The Appeals Bureau does not have a phone number for this hearing unless you provide it to us by following the instructions on the other side of this page. If you do not follow those instructions, the judge will not call you for the hearing. 871 IAC 26.14(7).

The information quoted above also appears on the hearing notice in Spanish.

The administrative law judge held the record open for 15 minutes past the scheduled start time to allow the claimant a reasonable opportunity to participate. However, claimant did not call the Appeals Bureau or otherwise register a telephone number during that time frame.

The unemployment insurance decision appealed by claimant concluded that the claimant was not eligible for unemployment insurance benefits.

Despite being denied benefits at initial fact-finding, the decision was made by Iowa Workforce Development to release funds of claimants while their appeals were pending due to the backlog in appeals caused by the recent COVID 19 outbreak. Claimant was one of the individuals whose funds were released pending appeal. The administrative record shows, claimant filed for and received a total of \$2,566.00 in regular unemployment insurance benefits for the seven weeks ending April 18, 2020.

Based on a review of the administrative record, claimant has also received Federal Pandemic Unemployment Compensation (FPUC) since this disqualifying separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedure Act at Iowa Code § 17A.12(3) states that if a party fails to appear for or participate in a hearing after being properly notified, the judge may enter a default decision or proceed with the hearing and make a decision in the absence of the party.

Iowa Admin. Code r. 871-26.14(7) provides, in relevant part:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals bureau with the names and telephone numbers of the persons who are participating in the hearing by the scheduled starting time of the hearing or is not available at the telephone number provided, the presiding officer may proceed with the hearing. If the appealing party fails to provide a telephone number or is unavailable for the hearing, the presiding officer may decide the appealing party is in default and dismiss the appeal as provide in Iowa Code section 17A.12(3).

If the claimant disagrees with this decision, the claimant may appeal the decision directly to the Employment Appeal Board, whose address is listed at the top right caption.

As claimant was receiving benefits, pending a determination on his appeal, the next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

Iowa Code § 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

Since the decision disqualifying the claimant has been affirmed, the claimant was overpaid \$2,566.00 in unemployment insurance benefits.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

DECISION:

The March 19, 2020, (reference 01) unemployment insurance decision denying benefits remains in effect as the appellant is in default and the appeal is dismissed. Claimant is overpaid regular unemployment insurance benefits in the amount of \$2,566.00 and is required to repay those benefits.

REMAND:

This matter is remanded to the Benefits Bureau of Iowa Workforce Development for an initial decision on whether claimant has been overpaid FPUC based on this disqualifying separation from employment.



Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

May 4, 2020
Decision Dated and Mailed

cal/scn