

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

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**JASON M BOGE**

Claimant

**APPEAL 22R-UI-18658-S2-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 11/28/21**

**Claimant: Appellant (6)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

Iowa Code § 17A.12(3) – Default Decision

Iowa Admin. Code r. 871—26.14(7) – Dismissal of Appeal on Default

**STATEMENT OF THE CASE:**

The claimant Jason M. Boge filed an appeal from the June 13, 2022 (reference 06) unemployment insurance decision that denied benefits. A hearing was held on July 27, 2022, for appeal 22A-UI-13966-DG-T. Claimant participated in the hearing. Employer Casey's Marketing Company did not participate in the hearing. On September 20, 2022, Administrative Law Judge Duane L. Golden issued a decision finding claimant eligible for benefits. The employer appealed to the Employment Appeal Board (EAB) stating they did not receive the hearing notice. On November 3, 2022, the EAB remanded this matter for a new hearing due to the employer's non-participation in the hearing.

After the Employment Appeal Board (EAB) remanded, due notice was issued, a hearing was scheduled to be held on December 1, 2022. The employer did not follow the instructions on the hearing notice in order to call into the hearing at the scheduled time. Because the EAB did not vacate the original appeal decision 22A-UI-13966-DG-T, that hearing record, including any exhibits, is adopted and incorporated herein.

**ISSUE:**

Should the original appeal decision be adopted?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: When the EAB remanded this matter to the Appeals Bureau for a new hearing, it did not vacate the previous ALJ decision that was issued by ALJ Golden on September 20, 2022, finding that the claimant was eligible for benefits because he was discharged with no showing of disqualifying job misconduct. The administrative law judge's findings of fact in appeal 22A-UI-13966-DG-T are hereby adopted and incorporated herein as the findings of fact for this appeal 22R-UI-18658-S2-T.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code § 17A.12(3) provides in pertinent part:

If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and make a decision in the absence of the party.

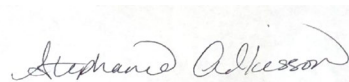
Iowa Admin. Code r. 871—26.14(7) provides:

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.

The appellant/claimant participated in the hearing with ALJ Golden on July 27, 2022. The matter was remanded to the Appeals Bureau based upon the request of the employer to be allowed to participate in the hearing. The employer received due notice of the new hearing date and time and chose not to participate. As such, the conclusions of law issued in appeal 22A-UI-13966-DG-T are hereby adopted and incorporated herein as the conclusions of law for this appeal 22R-UI-18658-S2-T. Claimant was discharged with no showing of disqualifying job misconduct. Benefits are allowed, provided claimant is otherwise eligible.

## DECISION:

Inasmuch as the decision was not vacated as a result of the Employment Appeal Board remand, the administrative law judge's decision in appeal 22A-UI-13966-DG-T is hereby adopted and incorporated herein as the decision for appeal 22R-UI-18658-S2-T. The June 13, 2022 (reference 06) unemployment insurance decision remains reversed. Benefits are allowed, provided claimant is otherwise eligible.



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Stephanie Adkisson  
Administrative Law Judge

December 5, 2022  
Decision Dated and Mailed

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**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

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.

**AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. 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.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: [eab.iowa.gov](http://eab.iowa.gov)**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.