

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**MARQUEL D POOLE**  
Claimant

**APPEAL 21A-UI-06499-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 03/22/20  
Claimant: Appellant (6)**

---

Iowa Code §96.4(3) – Able to and Available for Work  
Iowa Code § 17A.12(3) – Default Decision  
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

**STATEMENT OF THE CASE:**

Marquel D Poole, the claimant/appellant, filed an appeal from the February 25, 2021, (reference 02) unemployment insurance decision that concluded he was not eligible for unemployment insurance benefits as of February 14, 2021. The notice of hearing was mailed to Mr. Poole's last known addresses of record for a telephone hearing scheduled for May 10, 2021. A review of the Appeals Bureau's conference call system indicates that Mr. Poole did not respond to the hearing notice and provide a telephone number at which he could be reached for the scheduled hearing. Because Mr. Poole did not follow the instructions on the notice of hearing, no hearing was held.

**ISSUE:**

Should Mr. Poole's appeal be dismissed based on him not appearing and participating?

**FINDINGS OF FACT:**

Mr. Poole was properly notified of the scheduled hearing for this appeal. Mr. Poole did not provide a telephone number at which he could be reached for the scheduled hearing as required by the hearing notice. He did not request a postponement of the hearing before the hearing date. Official notice of the Clear2there hearing control screen is taken to establish that Mr. Poole did not call or register online with the Appeals Bureau to provide a telephone number and/or name of a representative before the date and time the hearing was scheduled. Mr. Poole did not call in before the record was closed, 15 minutes after the hearing was scheduled to begin.

The hearing notice instruction specifically advises parties in English and Spanish:

**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.

The hearing notice lists the hearing date of May 10, 2021 and the hearing time as 4:00 p.m. Iowa time. The back page of the hearing notice provides further warning in both languages:

You must register a phone number for each hearing by following the instructions on the front of this notice.

...

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 use 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.

As a courtesy to Mr. Poole, the administrative law judge left the record open for 15 minutes past the scheduled time of the hearing to give him a reasonable amount of time to call the Appeals Bureau to participate. Mr. Poole did not contact the Appeals Bureau or otherwise register for the hearing during that time period.

The unemployment insurance decision had concluded that Mr. Poole was not eligible for unemployment insurance benefits as of February 14, 2021.

#### **REASONING AND CONCLUSIONS OF LAW:**

The Iowa Administrative Procedures Act at 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. ... If a decision is rendered against a party who failed to appear for the hearing and the presiding officer is timely requested by that party to vacate the decision for good cause, the time for initiating a further appeal is stayed pending a determination by the presiding officer to grant or deny the request. If adequate reasons are provided showing good cause for the party's failure to appear, the presiding officer shall vacate the decision and, after proper service of notice, conduct another evidentiary hearing. If adequate reasons are not provided showing good cause for the party's failure to appear, the presiding officer shall deny the motion to vacate.

The Agency rules at Iowa Admin. Code r. 26.14(7) provide:

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). The record may be reopened if the absent party makes a request in writing to reopen the hearing under subrule 26.8(3) and shows good cause for reopening the hearing.

- a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.
- b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party.
- c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

Due process requires notice and an opportunity to be heard, both of which were provided to the parties. The appellant is responsible for going forward with the case in a prompt and thoughtful manner. The appellant must be present at the start of the hearing to avoid a default judgement. Iowa Code § 17A.12(3) and Iowa Admin. Code r. 26.14(7). The hearing notice instructs the parties to:

1. Read the hearing notice.
2. Register a telephone number where the party can be reached for the hearing.
3. Be available at that number at the date and time of the hearing.

The Iowa Supreme Court has held a default should not be set aside due to the appellant's negligence, carelessness, or inattention. See *Houlihan v. Emp't Appeal Bd.*, 545 N.W.2d 863 (Iowa 1996). Similarly, a default should not be set aside because the appellant has ignored clear requirements in the rules. Rather, a party must show it intended to proceed with the appeal and took steps to do so, but failed to appear because of some misunderstanding, accident, mistake or excusable neglect. Mr. Poole was not present at the start of the hearing. As a *courtesy*, Mr. Poole was granted additional time not required by statute or rule. The representative's decision remains in force and effect.

**DECISION:**

The February 25, 2021, (reference 02) unemployment insurance decision denying benefits remains in effect as Mr. Poole is in default and the appeal is dismissed.



---

Daniel Zeno  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

May 18, 2021  
Decision Dated and Mailed

dz/kmj