

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**DAKOTA L UPSHAW**  
Claimant

**APPEAL 22A-UI-04514-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 11/10/19  
Claimant: Appellant (6)**

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:**

Dakota L. Upshaw (claimant/appellant) filed an appeal from the February 3, 2022, reference 03, unemployment insurance decision that concluded claimant was overpaid \$999.00 in regular unemployment insurance benefits. A notice of hearing were mailed to the appellant's last known address of record for a telephone hearing scheduled for March 23, 2022, at 1:00 p.m. A review of the Appeals Bureau's conference call system indicates that the appellant failed to call the toll-free number listed on the hearing notice at the time of the hearing and no hearing was held.

**ISSUE:**

Should the appeal be dismissed based on the appellant's failure to appear and participate?

**FINDINGS OF FACT:**

The appellant was properly notified of the scheduled hearing for this appeal. The appellant did not call at the time of the hearing, nor did they request a postponement of the hearing as required by the hearing notice. Official notice of the Clear2there hearing control screen is taken to establish that appellant did not call at the time of the hearing.

The hearing notice instruction specifically advised the appellant of the date and time of hearing. It also states:

**IMPORTANT NOTICE!**

**YOU MUST CALL** the toll-free number: **866-783-7021** at the time of the hearing. When instructed, enter the PIN Number . . . followed by the pound key [#] and wait for the administrative law judge to begin the hearing.

The administrative law judge **WILL NOT** call you for the hearing, you **MUST** call into the number provided above to participate. **Failure to participate in the hearing may result in the dismissal of your appeal.**

The back page of the hearing notice provided further hearing instructions stating, "You must call the toll-free number on the front of this notice at the time of the hearing to participate."

As a courtesy to the appellant, the record was left open for a minimum of 15 minutes after the hearing start time to give the appellant a reasonable opportunity to participate.

The unemployment insurance decision stated that the appellant was overpaid \$999.00 in regular unemployment insurance benefits.

**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) 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. 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 appellant. 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 instructed the appellant to read the hearing notice and call the number listed for the hearing. If these instructions are not followed, the appealing 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. The Iowa Supreme Court has held a default decision should be upheld when the absence of the appellant was 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 be upheld when the appellant has ignored clear requirements in the rules.

In this case, the appellant was not present at the start of the hearing. As a courtesy to allow for any misunderstandings or mistakes, the appellant was granted additional time not required by statute or rule. However, the appellant did not call in for the hearing during the additional time allotted. Therefore, the appellant is in default, the appeal is dismissed, and the representative's decision remains in force and effect.

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

**DECISION:**

The February 3, 2022, reference 03, unemployment insurance decision establishing an overpayment of benefits remains in effect as the appellant is in default and the appeal is dismissed.



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

March 31, 2022

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Decision Dated and Mailed

jlb/abd

**NOTE TO CLAIMANT:** Individuals who do not qualify for regular unemployment insurance benefits, but who were unemployed or continue to be unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). For information regarding the Pandemic Unemployment Assistance (PUA) program, please contact IWD at 1-866-239-0843 or email: [UIclaimshelp@iwd.iowa.gov](mailto:UIclaimshelp@iwd.iowa.gov). On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.

You may find information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Iowa Finance Authority also has additional resources at <https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>