

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOHNNY PEAREY
Claimant

MENARD INC
Employer

APPEAL 21A-UI-22392-JT-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/05/21
Claimant: Appellant (6)

Iowa Code § 96.4(3) – Able & Available
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, Johnny Pearey, filed a timely appeal from the October 6, 2021 (reference 01) unemployment insurance decision that denied benefits effective September 5, 2021, based on the deputy's conclusion the claimant was unable to perform work due to illness. A notice of hearing was mailed to the parties' last-known addresses of record for a telephone hearing scheduled for 9:00 a.m. on November 30, 2021. The employer was available through Travis Hewitt. The claimant did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Based upon the claimant/appellant's failure to participate in the hearing and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision. The administrative law judge takes office notice of the relevant Clear2There record.

ISSUE:

Whether the appeal should be dismissed based on the claimant/appellant's failure to appear and participate.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing for this appeal. The claimant/appellant failed to call the toll-free number listed on the hearing notice at the time of the hearing. The appellant did not participate or request a postponement of the hearing as required by the hearing notice.

The hearing notice instruction advised parties of the date and time of hearing. It also stated:

IMPORTANT NOTICE!

YOU MUST CALL the toll-free number: **866-783-7021** at the time of the hearing. When instructed, enter the PIN Number 122392 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 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 will not call you to participate in the hearing. Instructions for participating are on the other side of this page. 871 IAC 26.14(7)

An insert was sent along with the hearing notice stating:

ATTENTION!

Instructions for participating in a hearing have changed.

Please review the enclosed hearing notice carefully and follow the instructions on how to join the call on the scheduled day and time of the hearing.

As a courtesy to the appellant the record was left open for 17 minutes after the hearing start time to give the appellant a reasonable opportunity to participate. When the claimant had not appeared by 9:17 a.m., the administrative law judge closed the record and dismissed the employer from the hearing.

The October 6, 2021 (reference 01) unemployment insurance decision denied benefits effective September 5, 2021, based on the deputy's conclusion the claimant was unable to perform work due to illness.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedure Act at Iowa Code § 17A.12(3) provides that if a party fails to appear or participate in a hearing after proper service of notice, 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:

(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 provided in Iowa Code section 17A.12(3). The record may be reopened if the absent party makes a request to reopen the hearing in writing under subrule 26.8(3) and shows good cause for reopening the hearing.

In this case, the claimant/appellant did not call the toll-free number listed on the hearing notice at the time of the hearing. The appellant is in default. The appeal should be dismissed.

If the appellant disagrees with this decision, the appellant may appeal the decision to the Employment Appeal Board pursuant to the instructions on the first page of this decision.

DECISION:

The claimant defaulted on the appeal. The appeal is dismissed. The October 6, 2021 (reference 01) unemployment insurance decision that denied benefits effective September 5, 2021, based on the deputy's conclusion the claimant was unable to perform work due to illness, remains in effect.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light-colored background.

James E. Timberland
Administrative Law Judge

December 28th, 2021
Decision Dated and Mailed

jet/rs