

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KIESHARON R MOORE-MUNSON  
TRLR 102  
1205 E PLATT ST  
MAQUOKETA IA 52060-2548**

**SEDONA STAFFING INC  
%SEDONA GROUP  
600 35<sup>TH</sup> AVE  
MOLINE IL 61265**

**APPEAL 20A-UI-09579-ED-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REQUEST TO REOPEN AND APPEAL RIGHTS:**

**This Decision Shall Become Final**, unless within fifteen (15) days from the mailing date below the administrative law judge's signature on the last page of the decision, you or any interested party:

(1) Make a request to reopen the hearing to the Appeals Bureau directly to:

**Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
or  
Fax (515)478-3528**

(2) **OR YOU MAY** Appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
or  
Fax (515)281-7191**

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:**

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

The grounds upon which such appeal is based.

**YOU MAY REPRESENT** yourself in this appeal or you may 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. It is important that you file your 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.

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**ONLINE RESOURCES:**

UI Appeals: <http://www.iowaworkforce.org/ui/appeals/index.html>

Claimant Handbook: <http://www.iowaworkforce.org/ui/handbook.htm>

Handbook for Employers: <http://www.iowaworkforce.org/ui/uiemployers.htm>

Employer account access and information: <https://www.myiowaui.org/UITIPTaxWeb/>

National Career Readiness Certificate or become a member employer utilizing internships through Skilled Iowa Initiative: <http://skillediowa.org/>

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KIESHARON R MOORE-MUNSON**  
Claimant

**SEDONA STAFFING INC**  
Employer

**APPEAL 20A-UI-09579-ED-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 04/05/20**  
**Claimant: Appellant (6)**

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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 August 5, 2020 unemployment insurance decision denying benefits based on claimant's separation from employment. (Ref. 02) Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for September 21, 2020. A review of the Appeals Bureau's conference call system indicates that the appellant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the scheduled 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 parties were properly notified of the scheduled hearing for this appeal. The appellant failed to provide a telephone number at which she could be reached for the scheduled hearing or request a postponement of the hearing as required by the hearing notice so no hearing was held. Official notice of the Clear2there hearing control screen is taken to establish that appellant did not call or register online with the Appeals Bureau to provide a telephone number and/or name of a representative.

The hearing notice instruction specifically advises parties:

**Immediately register your phone number online or by calling one of the numbers provided below for a telephone hearing scheduled for:**

Date: MONDAY SEPTEMBER 21, 2020

Iowa Time: 11:00 AM

**The judge will not call you on the day of the hearing if you have not registered your phone number with the Appeals Bureau in Des Moines, Iowa as instructed below.**

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

If you do not participate in the hearing because you do not register for the hearing, register late, or cannot be reached at the number you provided when the judge calls for the hearing, the appeal may be dismissed or decided based on other available evidence. **The judge will not call you unless you register online or by phone before the hearing and give your phone number to the Appeals Bureau as instructed on the front side of this notice.** This is true even if agency representatives previously contacted you directly or you provided your phone number on some written documentation.

As a *courtesy* to the appellant the record was left open for a minimum grace period of 15 minutes after the hearing start time to give the appellant a *reasonable* opportunity to participate. Allowing additional time would prejudice the non-appealing party for appearing in a timely manner. Holding the appellant in default for failure to appear and participate during a 15-minute window after the hearing start time is reasonable.

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

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

The Iowa Administrative Procedure 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.** (Emphasis added.)

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 provided in Iowa Code § 17A.12(3). The record may be reopened if the absent party makes a request 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. Instead, the presiding officer shall inquire ex parte as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. **The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.**

**c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.** (Emphasis added.)

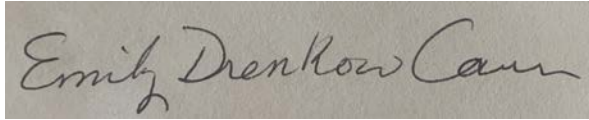
The Iowa Supreme Court has opined that a default should not be set aside for ordinary negligence or want of ordinary care. Defaults should not be set aside where the movant ignores plain instruction with ample opportunity to comply. See *Houlihan v. Emp't Appeal Bd.*, 545 N.W.2d 863 (Iowa 1996). Here the clear directive is to read the hearing notice and register a telephone number where the party can be reached for the hearing. The second part of that directive is to be available at the number provided at the date and time of the hearing. Further, if the party misses or does not receive the hearing call, the party has telephone numbers on the hearing notice at which to inquire. Due process requires notice and an opportunity to be heard, both of which were provided to each party. *The rule does not provide exceptions for good intentions and/or a party contacting the Appeals Bureau within a 'reasonable' or certain amount of time after the hearing is scheduled.* It is assumed an appellant intends to participate in the hearing simply by the fact that an appeal is filed, but the appellant's responsibility does not end there. Each party is required to follow the prominent specific written instructions printed on the hearing notice. The appellant filed the appeal and is held solely responsible for going forward with the case in a prompt and deliberate manner. The rule holds an appellant in default if not present *at the start* of hearing. As a courtesy, appellant was granted an additional 15-minute grace period not required by statute or rule. Here, notwithstanding notice, opportunity and additional time, the appellant failed to prosecute the case at the appointed date and time without providing a good-cause reason for the delay or failure to do so. Accordingly, the appellant is in default and the appeal shall be dismissed. Iowa Code § 17A.12(3) and Iowa Admin. Code r. 24.14(7). The unemployment insurance decision remains in force and effect.

Pursuant to the rule, the appellant must make a written request to the administrative law judge that the hearing be reopened within 15 days after the mailing date of this decision. The written request should be mailed to the administrative law judge at the address listed at the end of this decision and must explain the emergency or other good cause that prevented the appellant from participating in the hearing at its scheduled time. The appellant also has the option to appeal the decision directly to the Employment Appeal Board at the address listed in the caption appeal rights information.

*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, but who are currently unemployed for reasons related to COVID-19 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>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

**DECISION:**

The August 5, 2020, (reference 012 unemployment insurance decision denying benefits remains in effect, as the appellant is in default and the appeal is dismissed.

A rectangular box containing a handwritten signature in cursive script that reads "Emily Drenkow Carr".

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Emily Drenkow Carr  
Administrative Law Judge

September 24, 2020  
Decision Dated and Mailed

ed/sam