

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MAYEDEH PETERS
Claimant

MOSAIC
Employer

APPEAL 17A-UI-05896-NM

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/07/17
Claimant: Appellant (6)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

An appeal was filed from an unemployment insurance decision dated May 26, 2017, (reference 01) that denied benefits based upon claimant's discharge for conduct not in the best interest of the employer. Notice of hearing was mailed to the parties' last known addresses of record for a hearing to be held in Des Moines, Iowa, at 11:00 a.m. on June 28, 2017. The claimant/appellant failed to appear in response to the hearing notice instruction and no hearing was held. The employer's witnesses and representative were present and prepared to proceed.

ISSUE:

Should the appeal be dismissed based upon the appellant not responding to the hearing notice instruction and not appearing for the scheduled hearing?

FINDINGS OF FACT:

The party was properly notified of the scheduled hearing on this appeal. The appellant failed to respond to the hearing notice instruction and appear for the scheduled hearing, and did not request a postponement of the hearing.

An in-person hearing was scheduled in Des Moines, Iowa at the request of the claimant/appellant. The record was left open for a grace period of 20 minutes after the hearing start time to give the appellant a *reasonable* opportunity to participate. This reasonable amount of time is appropriate because if a hearing were conducted with the non-appealing party alone it would have likely concluded in 20 minutes or less. Allowing additional time would prejudice the non-appealing party for appearing in a timely manner. The 20 minute wait time is also a reasonable period to hold the record open as insufficient time would remain to conduct a quality due process hearing in the time allotted by the Appeals Bureau. Each two-party hearing is allowed 60 minutes and a one-party hearing allowed 30 minutes. Holding the appellant in

default for failure to appear and participate during a 20 minute window after the hearing start time is entirely reasonable considering the time allocated for unemployment hearings.

The representative's decision concluded that the claimant/appellant 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.**

Agency rule Iowa Admin. Code r. 871-26.14(7) provides that if the appealing party has not responded to a notice of hearing by appearing by the scheduled starting time of the hearing, the judge 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 and shows good cause for reopening the hearing. The rule further states that failure to read or follow the instructions on the notice of hearing is not good cause for reopening the record. Iowa Admin. Code r. 871-26.14(7)c.

The appellant appealed the unemployment insurance decision but failed to appear to participate in the hearing. The appellant has therefore defaulted on his appeal pursuant to Iowa Code § 17A.12(3) and Iowa Admin. Code r. 871-26.14(7), and the decision remains in force and effect.

If the appellant does not intend to pursue this appeal, she need not take any action. If she intends to pursue this appeal, the appellant may appeal the decision directly to the Employment Appeal Board at the address listed in the caption appeal rights information. Or, the appellant may make a written request to the administrative law judge that the hearing be reopened. 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. If she intends to pursue this appeal, the appellant must take one of these actions within 15 days after the mailing date of this decision.

DECISION:

The appellant is in default and the appeal is dismissed. The unemployment insurance decision dated May 26, 2017, (reference 01) denying benefits remains in effect.

Nicole Merrill
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

Decision Dated and Mailed

nm/scn