

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DALE R NEHMAN**  
Claimant

**BHJUSA INC**  
Employer

**APPEAL 20A-UI-00816-SC**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/15/19  
Claimant: Appellant (6)**

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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:**

On January 29, 2020, Dale R. Nehman (claimant/appellant) filed an appeal from the unemployment insurance decision dated January 21, 2020, reference 02, that denied benefits based upon the determination BHJUSA, Inc. (employer) discharged him for conduct not in its best interest. Notice of hearing was mailed to the parties' last known addresses of record for a hearing to be held in Fort Dodge, Iowa, at 9:00 a.m. on February 19, 2020. The appellant failed to appear in response to the hearing notice instruction and no hearing was held.

**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 instructions to appear for the scheduled hearing or request a postponement of the hearing.

The unemployment insurance decision stated that the claimant was not eligible for 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(6) provides:

If one or more parties which received notice for a contested case hearing fail to appear at the time and place of an in-person hearing, the presiding officer may proceed with the hearing. If the appealing party fails to appear, the presiding officer may decide the party is in default and dismiss the appeal. The hearing 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 arrives for an in-person hearing while the hearing is in session, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If an absent party arrives for an in-person hearing after the record has been closed and after any party which had participated in the hearing had departed, the presiding officer shall not take the evidence of the late party.

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(6). The hearing notice instructs the parties to read the hearing notice and report to the location identified at the specified time and date.

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 did not appear for 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 appear for the hearing in the additional time allotted. Therefore, the appellant is in default, the appeal is dismissed, and the representative's decision remains in force and effect.

Pursuant to the rule, the appellant may make a written request to the administrative law judge that the hearing be reopened, but must do so 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, whose address is listed at the top right caption.

**DECISION:**

The January 21, 2020, reference 02, unemployment insurance decision denying benefits remains in effect as the appellant is in default and the appeal is dismissed.



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Stephanie R. Callahan  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
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Des Moines, Iowa 50319-0209  
Fax 515-478-3528

February 19, 2020  
Decision Dated and Mailed

src/scn