

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KEENAN EVANS
Claimant

WALMART INC
Employer

APPEAL 19A-UI-01484-JC

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/20/19
Claimant: Appellant (6)

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:

The claimant/appellant, Keenan Evans, filed an appeal from the February 15, 2019 (reference 02) unemployment insurance decision that denied benefits. Notice of the hearing was mailed to the parties' last-known addresses of record, for an in-person hearing in Fort Dodge, Iowa to be held at 11:30 a.m. on April 18, 2019. The claimant/appellant failed to respond to the hearing notice instruction and appear for the hearing. A thirty minute grace period was extended as a courtesy to the claimant before the record was closed. The claimant/appellant did not appear or contact the Appeals Bureau. No request for postponement was made and no hearing was held.

ISSUE:

Should the appeal 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, Keenan Evans, failed to appear for his scheduled in-person hearing in Fort Dodge, Iowa. The administrative law judge checked with Iowa Workforce Development staff to see if the claimant had checked in or contacted the office before closing the record. The record was held open 30 minutes to give the claimant a chance to appear, or alternately, contact the Appeals Bureau.

The hearing notice instruction specifically advised the parties:

Date: THU APR 18, 2019
Iowa Time: 11:30 a.m.

Location:
3 TRITON CIR
FORT DODGE, IOWA 50501-5729

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

Failure to Participate

If you do not participate in the hearing, the judge may dismiss the appeal or issue a decision without considering your evidence. You can ask to participate in the in-person via telephone. 871 IAC 26.6(4).

The agency's decision concluded that the claimant was disqualified 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.

Iowa Admin. Code r. 871-26.14(6) provides:

(6) 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 has departed, the presiding officer shall not take the evidence of the late party.

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 was for the claimant to read the notice of hearing, which was mailed to him on March 22, 2019 in advance of the April 18, 2019 in-person. He had ample opportunity to appear at the scheduled date and time or alternately, request to attend by telephone. 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.*

The claimant/appellant, Keenan Evans, appealed the unemployment insurance decision but failed to be available to participate in the scheduled hearing. The appellant has therefore

defaulted on his appeal pursuant to Iowa Code § 17A.12(3) and Iowa Admin. Code r. 871-24.14(7), and the decision remains in force and effect.

If the claimant/appellant disagrees with this decision, a written request to reopen the record must be made to the administrative law judge within 15 days after the mailing date of this decision. The 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 the scheduled time.

DECISION:

The claimant/appellant is in default and the appeal is dismissed. The unemployment insurance decision dated February 15, 2019, (reference 02) denying benefits remains in effect.

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

Decision Dated and Mailed

jlb/scn