

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KIMBERLY J WETZEL
Claimant

WALMART INC
Employer

APPEAL 19A-UI-08987-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/20/19
Claimant: Respondent (6)

Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

Employer filed an appeal from the November 8, 2019, (reference 01) unemployment insurance decision that concluded claimant was eligible for unemployment insurance benefits. Iowa Workforce Development mailed a hearing notice to the claimant and employer for a telephone hearing scheduled for December 10, 2019, at 1:00 P.M. Employer did not answer at the number provided to the Appeals Bureau prior to the hearing so no hearing was held. The administrative law judge took official notice of the hearing control screen which shows employer put the administrative law judge on hold for over four minutes and did not answer at the telephone number provided prior to the time of the hearing.

ISSUE:

Should the appeal be dismissed based on employer's failure to appear and participate?

FINDINGS OF FACT:

The claimant and employer were properly notified of the scheduled hearing for this appeal. The employer did not answer at the telephone number provided to the Appeals Bureau for the scheduled hearing. Employer did not request a postponement of the hearing.

The hearing notice instruction specifically advises parties of the date and time of the hearing. It also states:

IMPORTANT NOTICE!

YOU MUST PROVIDE YOUR PHONE NUMBER TO THE APPEALS BUREAU AS SOON AS POSSIBLE. If you do not follow these instructions, the judge will not call you for the hearing. You must also provide the name(s) and phone number(s) of any witnesses to the Appeals Bureau.

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 does not have a phone number for this hearing unless you provide it to us by following the instructions on the other side of this page. If you do not follow those instructions, the judge will not call you for the hearing. 871 IAC 26.14(7).

The information quoted above also appears on the hearing notice in Spanish.

The administrative law judge held the record open for 15 minutes past the scheduled start time to allow the employer a reasonable opportunity to participate. However, employer did not contact the Appeals Bureau to participate during that time frame.

The unemployment insurance decision appealed by employer concluded that the claimant was eligible for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedure Act at Iowa Code § 17A.12(3) states that if a party fails to appear for or participate in a hearing after being properly notified, the judge may enter a default decision or proceed with the hearing and make a decision in the absence of the party. The law also states that if a party makes a timely request to vacate the decision and shows good cause for failing to appear, the judge shall vacate the decision and conduct another hearing.

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 provide 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.

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.

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

If the employer disagrees with this decision, the employer may make a written request to reopen the record 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 good cause reason that prevented the employer from participating in the hearing at

the scheduled time. The employer 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 November 8, 2019, (reference 01) unemployment insurance decision allowing benefits remains in effect as the appellant is in default and the appeal is dismissed.



Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

December 11, 2019
Decision Dated and Mailed

cal/scn