

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AJ SMITH
Claimant

ADVANCE STORES COMPNAY INC
Employer

APPEAL 20A-UI-07881-HP
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/26/20
Claimant: Respondent (6)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-Finding Interview
PL 116-136 § 2104(B) –Federal Pandemic Unemployment Compensation
Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

Appellant/Employer Advance Stores Company Inc. filed an appeal from a July 9, 2020 (reference 02) unemployment insurance decision that allowed benefits. Notice of hearing was mailed to the appellant's last known addresses of record for a telephone hearing on August 17, 2020, at 8:00 a.m. Appellant failed to appear for the hearing and no hearing was held.

ISSUE:

Whether the appeal should be dismissed based on the appellant's failure to appear and participate.

FINDINGS OF FACT:

The appellant was properly notified of the scheduled hearing for this appeal. The appellant failed to appear for the hearing and did not participate or request a postponement of the hearing as required by the hearing notice.

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

IMPORTANT!

When you arrive at the hearing location, do not wait in line. You should immediately ask workforce center staff where to go for the hearing. On the scheduled date, you must be present at the location identified above and ready to participate in the hearing at the scheduled time. . . .

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

Failure to Participate in Appeal Hearing

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 hearing via telephone. 871 IAC 26.6(4)

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

As a courtesy to the appellant the record was left open for a minimum of 20 minutes after the hearing start time to give the appellant a reasonable opportunity to participate. Holding the appellant in default for failure to appear and participate during a 20-minute window after the hearing start time is reasonable considering the time allocated for unemployment hearings.

The representative's decision concluded that claimant was eligible for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedure Act at Iowa Code § 17A.12(3) provides that if a party fails to appear or participate in a hearing after proper service of notice, the judge may enter a default decision or proceed with the hearing and make a decision in the absence of the party. The statute further 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.

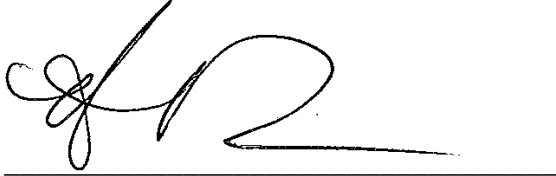
Iowa Admin. Code r. 871-26.14(6) provides, in pertinent part:

(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.

If the appellant disagrees with this decision, the appellant may appeal the decision directly to the Employment Appeal Board, whose address is listed at the top right caption.

DECISION:

The July 9, 2020 (reference 02) unemployment insurance decision allowing benefits remains in effect as the appellant is in default and the appeal is dismissed.



Heather L. Palmer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

August 21, 2020
Decision Dated and Mailed

hlp/mh