

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**SHRISE D MCDADE**  
Claimant

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**APPEAL 21A-UI-16219-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/29/20**  
**Claimant: Appellant (6)**

Iowa Code § 96.6(2) – Timeliness of Appeal  
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 July 20, 2021, Shrise McDade (claimant/appellant) filed an appeal from the Iowa Workforce Development decision dated June 8, 2021 (reference 04) that determined she was overpaid Federal Pandemic Unemployment Compensation (FPUC) in the amount of \$16,200.00 with a 15 percent misrepresentation penalty as a result of a decision finding claimant ineligible for PUA.

Notice of hearing was mailed to the party's last known addresses of record for a telephone hearing to be held on September 3, 2021 at 10:15 a.m. Claimant/appellant was not available at the hearing start time at the number she registered for the hearing and her voicemail was full. She did not call in within a reasonable timeframe after the hearing start time. No hearing was held.

**ISSUES:**

- I. Should the appeal be dismissed based on the appellant's failure to appear and participate?

**FINDINGS OF FACT:**

The parties were properly notified of the scheduled hearing for this appeal. The appellant was not available at hearing start time at the telephone number it provided for the hearing and did not request a postponement of the hearing as required by the hearing notice. Official notice of the Clear2there hearing control screen is taken to establish that appellant was not available at the hearing start time at the telephone number it provided for 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:

If you do not participate in the hearing, the judge may dismiss the appeal or issue a decision without considering your evidence or witness(es). 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 record was left open for a minimum of 15 minutes after the hearing start time as courtesy to the appellant. The appellant did not register an alternative number or call in to participate within that timeframe.

### **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.

Iowa Admin. Code r. 26.14(7) provides:

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 provided in Iowa Code § 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.

Due process requires notice and an opportunity to be heard, both of which were provided to the appellant. The appellant filed the appeal and is solely responsible for prosecuting the case in a timely and deliberate manner. The rule holds appellant in default if not present at the start of hearing. As a courtesy, appellant was granted additional time not required by statute or rule. Here, notwithstanding additional time, notice and opportunity, the appellant failed to prosecute the case promptly. As such the appellant is in default and the appeal shall be dismissed. The representative's decision remains in force and effect.

**DECISION:**

The decision dated June 8, 2021 (reference 04) that determined she was overpaid Federal Pandemic Unemployment Compensation (FPUC) in the amount of \$16,200.00 with a 15 percent misrepresentation penalty as a result of a decision finding claimant ineligible for PUA remains in effect, as the appellant is in default. The appeal is dismissed.



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

September 09, 2021  
Decision Dated and Mailed

abd/mn

**Note to Claimant:**

If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.

If this decision determines you have been overpaid FPUC and/or PEUC, you may request a waiver of the overpayment. Instructions for requesting a waiver can be found at <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>. If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.

Individuals who are disqualified from or are otherwise ineligible for regular unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.