

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

MATTHEW J KRUEGER
Claimant

SWIFT PORK COMPANY
Employer

APPEAL 22A-UI-07973-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/06/22
Claimant: Appellant (6)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence
Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

Matthew J Krueger, the claimant/appellant, filed an appeal from the Iowa Workforce Development's (IWD) March 29, 2022, (reference 01) unemployment insurance (UI) decision that denied benefits as of March 6, 2022 because IWD records indicated that Mr. Krueger was on a leave of absence. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for July 11, 2022. Mr. Krueger did not call the toll-free number listed on hearing notice at the time the hearing was scheduled to begin. The employer did not call the toll-free number listed on hearing notice at the time the hearing was scheduled to begin. Because Mr. Krueger filed the appeal but did not call in, no hearing was held.

ISSUE:

Should Mr. Krueger's appeal be dismissed based on him not appearing and participating?

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing for this appeal. Mr. Krueger did not call the toll-free number listed on the hearing notice at the time scheduled for this appeal hearing. He did not request a postponement of the hearing before the hearing date. He did not call in before the record was closed, 15 minutes after the hearing was scheduled to begin. No hearing was held.

The hearing notice lists the hearing date of July 11, 2022, and the hearing time as 8:00 a.m. Iowa time. The hearing notice also advises parties:

IMPORTANT NOTICE!

YOU MUST CALL the toll-free number **866-783-7021** at the time of the hearing. When instructed enter the PIN Number . . . followed by the pound key [#] and wait for the administrative law judge to begin the hearing.

The administrative law judge **WILL NOT** call you for the hearing, you **MUST** call into the number provided above to participate. **Failure to participate in the hearing may result in dismissal of your appeal.**

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

You must call the toll-free number on the front of this notice at the time of the hearing to participate.

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 will not call you to participate in the hearing. Instructions for participating are on the other side of this page. 871 IAC 26.14(7)

The record was left open for a grace period of 15 minutes after the hearing start time to give Mr. Krueger a *reasonable* opportunity to participate. This reasonable amount of time is appropriate because if a hearing were conducted with the non-appealing party alone it would have likely concluded in 15 minutes or less. Holding Mr. Krueger in default for not appearing and participating during a 15-minute window after the hearing start time is reasonable considering the time allocated for each appeal hearing. Allowing this additional time period is more than reasonable under the circumstances.

The UI decision had concluded that Mr. Krueger was not eligible for UI benefits as of March 6, 2022.

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(7) provide:

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 in writing to reopen the hearing 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 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 judgment. Iowa Code § 17A.12(3) and Iowa Admin. Code r. 26.14(7). The hearing notice instructs the parties to:

1. Read the hearing notice.
2. Call the toll-free number listed on hearing notice at the time the hearing is scheduled to begin
3. Enter the PIN and wait for the administrative law judge to begin the hearing.

The Iowa Supreme Court has held a default should not be set aside 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 not be set aside because the appellant has ignored clear requirements in the rules. Rather, a 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. Mr. Krueger was not present at the start of the hearing. As a *courtesy*, Mr. Krueger was granted additional time not required by statute or rule. The representative's decision remains in force and effect.

DECISION:

The March 29, 2022, (reference 01) UI decision denying benefits as of March 6, 2022 remains in effect as Mr. Krueger is in default and the appeal is DISMISSED.



Daniel Zeno
Administrative Law Judge

September 8, 2022 _____
Decision Dated and Mailed

dz/sa

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to **file a petition for judicial review in District Court** within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.