

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES CARPENTER

Claimant

APPEAL 19A-UI-03853-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHARLES GABUS FORD INC

Employer

OC: 03/31/19

Claimant: Appellant (6)

Iowa Code § 96.5(2)a – Discharge for Misconduct
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:

The claimant/appellant, James Carpenter, filed an appeal from the April 26, 2019 (reference 01) Iowa Workforce Development ("IWD") unemployment insurance decision which denied benefits based upon his separation with this employer.

The parties were properly notified about the hearing. A first telephone hearing was scheduled to be held on June 24, 2019. At the time of the hearing, the claimant requested to obtain legal counsel. The request was granted and a new notice of hearing was mailed to the parties with the new date and time. In addition, an order was issued confirming the postponement, stating the new date and time, and providing instructions for the second hearing.

The notice of the second hearing was mailed to the claimant's last known address of record for a telephone hearing to be held at 1:00 p.m. on July 17, 2019. A review of the Appeals Bureau's conference call system after 1:20 p.m. the same day shows the claimant/appellant failed to be available when called for the hearing. The administrative law judge made two attempts to reach the claimant and received no answer and no option to leave a voicemail. The record was held open for a 15 minute grace period to allow the claimant to contact the Appeals Bureau when he did not receive the anticipated call. He did not contact the Appeals Bureau 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, James Carpenter, failed to be available when called at the time scheduled for this appeal hearing as required by the hearing notice. The claimant/appellant did not request

a postponement of the hearing after the first hearing scheduled for June 24, 2019. No hearing was held.

The hearing notice instruction specifically advised the parties:

Date: WED JUL 17, 2019
Iowa Time: 1:00 p.m.

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.

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

Register/Appeal Hearing Procedure

You must register a phone number for each hearing by following the instructions on the front of this notice.

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. 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).

In addition, both parties were sent a copy of an order regarding the rescheduled hearing which stated in relevant part:

The request is granted and the new hearing date and time will be **July 17, 2019 at 1:00 p.m.** A new notice of hearing will be sent to the claimant and employer. The parties are reminded to read both sides of the hearing notice containing instructions regarding the hearing. The claimant will not be granted a second postponement to secure or meet with a lawyer. Parties are expected to make arrangements to participate in hearings. Failure to prepare for a hearing is not a good cause reason to delay or postpone the hearing.

If either party is unavailable at the time of the hearing, the party has two options to participate:

1. Legal counsel or a hearing representative may attend as the representative.
2. The administrative law judge will accept a written statement in lieu of attendance at the hearing, and will conduct a hearing, using the written statement, registered witnesses and the administrative record. The statement must be received **prior** to the hearing and emailed to: uiappealshelp@iwd.iowa.gov

The agency's decision concluded that the claimant was disqualified for unemployment insurance benefits based upon his separation from employment with this employer.

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.**

Agency rules at 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.** (Emphasis added.)

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 is to read the hearing notice and register a telephone number where the party can be reached for the hearing. The second part of that directive is to be available at the number provided at the date and time of the hearing. Further, if the party misses or does not receive the hearing call, he or she may call the telephone numbers on the hearing notice. 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, James Carpenter, 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 April 26, 2019, (reference 01) 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