

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**YOSEF WOLDEMICHAEL**  
Claimant

**SWIFT PORK COMPANY**  
Employer

**APPEAL 16A-UI-09323-CL**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/31/16  
Claimant: Respondent (6)**

Iowa Code § 17A.12(3) – Default Decision  
Iowa Admin. Code r. 871-26.14(6) – Dismissal of Appeal on Default

**STATEMENT OF THE CASE:**

Employer/appellant filed an appeal from the August 19, 2016, (reference 01) unemployment insurance decision that concluded claimant was eligible for unemployment insurance benefits after a separation from employment. Notice of hearing was mailed to the parties' last known addresses of record for a hearing scheduled for 1:00 p.m. on October 19, 2016, in Ottumwa, Iowa. On Thursday, October 13, 2016, IWD contacted the employer twice by telephone to provide it with subpoenas for the hearing. The employer did not answer either phone call. IWD left messages that went unreturned. On Friday, October 14, 2016, IWD provided subpoenas for the hearing to employer's third party representative, Talx UCM Services. On Tuesday, October 18, 2016, IWD contacted Talx UCM Services to ask whether employer would appear for the hearing in Ottumwa, Iowa on October 19, 2016, as employer neglected to participate and/or withdrew its appeal in other hearings scheduled in Ottumwa, Iowa within the same time period. IWD notified Talx UCM Services that the administrative law judge, claimant's attorney, and interpreter would respectively be required to travel at least 170 miles to attend the hearing. The employer waited until after 11:00 a.m. on Wednesday, October 19, 2016, when the administrative law judge, claimant's attorney, and the interpreter were already en route to Ottumwa, Iowa to notify IWD that it would not attend the hearing that was scheduled based on its own appeal.

**ISSUE:**

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 in-person hearing for this appeal in Ottumwa, Iowa on October 19, 2016. The appellant chose not to participate in the hearing. The hearing notice states, "If you do not participate in the hearing, the judge may dismiss the appeal. . . ."

The unemployment insurance decision had concluded that the claimant was qualified for unemployment insurance benefits.

## 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.** (Emphasis added.)

Iowa Admin. Code r. 871-26.14(6) provides:

(6) In the event that one or more parties which have 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.

a. If an absent party arrives for an in-person hearing while the hearing is in session, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If an absent party arrives for an in-person hearing after the record has been closed and after any party which had participated in the hearing has departed, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire ex parte as to the reason the party was late. For good cause shown, the presiding officer shall cause notice of hearing to be issued to all parties of record and reopen the record. **The record shall not be reopened if the presiding officer does not find a good cause for the party's late arrival.** (Emphasis added.)

Here, the appellant is in default and the appeal shall be dismissed. Iowa Code § 17A.12(3) and Iowa Admin. Code r. 24.14(6). The unemployment insurance decision remains in force and effect.

The appellant may make a written request to the administrative law judge that the hearing be reopened 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 emergency or other good cause that prevented the appellant from participating in the hearing at its scheduled time. The appellant also has the option to appeal the decision directly to the Employment Appeal Board at the address listed in the caption appeal rights information.

## DECISION:

The August 19, 2016, (reference 01) unemployment insurance decision allowing benefits remains in effect as the appellant is in default.

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

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Decision Dated and Mailed

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