

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**THEOPHILUS KING**  
Claimant

**APPEAL 21A-UI-20330-SN-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CFM ENTERPRISES**

**OC: 07/05/20**  
**Claimant: Appellant (6)**

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Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Code § 17A.12(3) – Default Decision  
Iowa Admin. Code r. 871-26.8(1) – Dismissal of Appeal

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the September 1, 2020, (reference 06) unemployment insurance decision that found claimant overpaid regular unemployment benefits. Iowa Workforce Development mailed a notice of hearing to claimant's last address of record. The hearing was scheduled for November 7, 2021, at 9:05 a.m. Claimant did not provide a telephone number to the Appeals Bureau prior to the scheduled hearing. No hearing was held.

**ISSUE:**

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

**FINDINGS OF FACT:**

Iowa Workforce Development notified claimant of the hearing. The claimant did not respond to the hearing notice or otherwise provide a telephone number to the Appeals Bureau. Claimant did not participate in the hearing or request a postponement. Claimant did not follow the instructions on the hearing notice. Official notice is taken of the hearing control screen to establish that claimant did not provide a telephone number to the Appeals Bureau prior to the time of the scheduled hearing.

The hearing notice instruction specifically advises claimant 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:

**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 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.

As a courtesy to the claimant, the administrative law judge left the record open for 15 minutes past the scheduled time of the hearing to give the claimant a reasonable amount of time to call the Appeals Bureau to participate. Claimant did not contact the Appeals Bureau or otherwise register for the hearing during that time period.

The initial unemployment insurance concluded claimant was overpaid \$4221 in regular unemployment 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.

Iowa Admin. Code r. 871-26.14(7) provides, in relevant part:

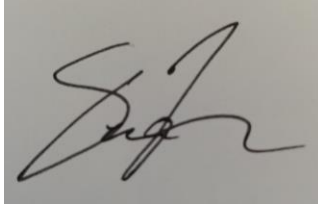
(7) If a party has not responded to a notice of telephone hearing by providing the appeals bureau with the names and telephone numbers of the persons who are participating in the hearing by the scheduled starting time of the hearing or is not available at the telephone number provided, the presiding 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).

In this case, claimant failed to provide a telephone number to the Appeals Bureau prior to the scheduled hearing. Claimant is in default and the appeal is dismissed.

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

**DECISION:**

The September 1, 2020, (reference 06) unemployment insurance decision establishing an overpayment of benefits remains in effect as the appellant is in default.

A rectangular box containing a handwritten signature in black ink. The signature is cursive and appears to read 'Sean M. Nelson'.

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Sean M. Nelson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 725-9067

November 23, 2021  
Decision Dated and Mailed

smn/mn