

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANTHONY M BREITBACH
Claimant

APPEAL 21A-UI-18000-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 03/15/20
Claimant: Appellant (6)

Iowa Code §96.3(7) – Recovery of Benefit Overpayment
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation
Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

Anthony M Breitbach, the claimant/appellant, filed an appeal from the August 4, 2021, (reference 03) unemployment insurance (UI) decision that concluded he was overpaid Federal Pandemic Unemployment Compensation (FPUC) benefits in the amount of \$1,200.00. A notice of hearing was mailed to Mr. Breitbach's last known address of record for a telephone hearing scheduled for October 6, 2021. A review of the Appeals Bureau's conference call system indicates that Mr. Breitbach did not provide a telephone number at which he could be reached for the scheduled hearing. Because Mr. Breitbach filed the appeal but did not provide a telephone number at which he could be reached for the scheduled hearing, no hearing was held.

ISSUE:

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

FINDINGS OF FACT:

Mr. Breitbach was properly notified of the scheduled hearing for this appeal. He did not provide a telephone number at which he could be reached for the scheduled hearing. He did not request a postponement of the hearing before the hearing date. Official notice of the Clear2there hearing control screen is taken to establish that Mr. Breitbach did not call or register online with the Appeals Bureau to provide a telephone number and/or name of a representative before the date and time the hearing was scheduled. Mr. Breitbach did not call in before the record was closed, 15 minutes after the hearing was scheduled to begin.

The hearing notice instruction advises parties in English and Spanish:

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 hearing notice lists the hearing date of October 6, 2021 and the hearing time as 3:00 p.m. Iowa time. The back page of the hearing notice provides further warning in both languages:

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

...

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 use 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.

The record was left open for a grace period of 15 minutes after the hearing start time to give Mr. Breitbach 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. The 15 minute wait time is also a reasonable period to hold the record open as insufficient time would remain to conduct a quality due process hearing in the time allotted by the Appeals Bureau. Each two-party hearing is allowed 60 minutes and a one-party hearing allowed 30 minutes. Holding Mr. Breitbach in default for not appearing and participating during a 15 minute window after the hearing start time is entirely reasonable considering the time allocated for unemployment hearings.

The unemployment insurance decision had concluded that Mr. Breitbach was overpaid FPUC benefits in the amount of \$1,200.00.

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 sub rule 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 judgement. 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. Register a telephone number where the party can be reached for the hearing.
3. Be available at that number at the date and time of 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. Breitbach was not present at the start of the hearing. As a *courtesy*, Mr. Breitbach was granted additional time not required by statute or rule. The representative's decision remains in force and effect.

DECISION:

The August 4, 2021, (reference 03) unemployment insurance decision concluding that Mr. Breitbach was overpaid FPUC benefits in the amount of \$1,200.00 remains in effect as Mr. Breitbach is in default and the appeal is dismissed.



Daniel Zeno
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October 8, 2021
Decision Dated and Mailed

dz/mn