

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JUSTIN MALCOM
Claimant

THE AMERICAN BOTTLING COMPANY
Employer

APPEAL 21A-UI-04296-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/05/20
Claimant: Appellant (6)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

On January 30, 2021, Justin Malcom (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated January 28, 2021 (reference 01) that denied benefits.

Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for April 6, 2021 at 1:00 p.m. A review of the Appeals Bureau's conference call system indicates that the appellant was not available at the telephone number provided for the scheduled hearing. As such, no hearing was held.

Hearings on other matters relating to claimant were set for 1:05 p.m. and 2:00 p.m. as well. Prior to the hearing, the administrative law judge determined the 2:00 p.m. hearing had been set up in error, as the issue appealed had already been heard and a decision issued on March 15, 2021. The administrative law judge issued a decision on March 22, 2021, finding the appeal set for 2:00 p.m. had been set up in error, dismissing that appeal, and cancelling the 2:00 p.m. hearing. **That decision specifically noted there were hearings set in other matters involving claimant on April 6, 2021 at 1:00 and 1:05 p.m. and that those hearings remained in place as scheduled.**

ISSUES:

- I. 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 hearing for this appeal. The appellant was not available at the telephone number provided for the scheduled hearing and did not participate or request a postponement of the hearing as required by the hearing notice. Official notice of the Clear2there hearing control screen is taken to establish that appellant did not answer when called at the number provided at registration.

The hearing notice instruction specifically advises parties 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:

If you do not participate in the hearing, the judge may dismiss the appeal or issue a decision without considering your evidence or witness(es).

The information quoted above also appears on the hearing notice in Spanish.

As a *courtesy* to the appellant the record was left open for a minimum of 15 minutes after the hearing start time to give the appellant 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. Allowing additional time would prejudice the non-appealing party for appearing in a timely manner.

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. Holding the appellant in default for failure to appear and participate during a 15-minute window after the hearing start time is entirely reasonable considering the time allocated for unemployment hearings.

The representative's decision denied benefits.

REASONING AND CONCLUSIONS OF LAW:

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

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 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.

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 mandates with ample opportunity to abide. See *Houlihan v. Emp't Appeal Bd.*, 545 N.W.2d 863 (Iowa 1996). Here the plain and simple mandate is to read the hearing notice and register a telephone number where the party can be reached for the hearing. The second simple and obvious mandate 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, the party has telephone numbers on the hearing notice at which to inquire.

Due process requires notice and an opportunity to be heard, both of which were provided to the parties. *This rule does not provide exceptions for good intentions and/or a party contacting the Appeals Bureau within a reasonable amount of time after the hearing is scheduled.* It can be assumed an appellant intends to participate in the hearing simply by the fact an appeal is filed, but their responsibility does not end there and *all* parties are required to follow the specific written instructions printed on the hearing notice. The appellant filed the appeal and is held solely responsible for going forward with the case in an expeditious and deliberate manner.

The rule holds appellant in default if not present *at the start* of hearing. As a *courtesy*, appellant was granted additional time not required by statute or rule. Here, notwithstanding additional time, notice and opportunity, the appellant failed to prosecute the case promptly and as such the appellant is in default and the appeal shall be dismissed. Iowa Code § 17A.12(3) and Iowa Admin. Code r. 24.14(7). The representative's decision remains in force and effect.

DECISION:

The decision dated January 28, 2021 (reference 01) that denied benefits remains in effect, as the appellant is in default and the appeal is dismissed.



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

April 12, 2021
Decision Dated and Mailed

abd/scn

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.