

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TYREE WYANT
Claimant

EXPRESS SERVICES INC
Employer

APPEAL 22A-UI-05354-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/23/22
Claimant: Respondent (6)

Iowa Code § 96.5(1)(j) – Temporary Employment Separation
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 February 28, 2022, the employer filed a timely appeal from the February 23, 2022 (reference 01) unemployment insurance decision that allowed benefits to the claimant, provided the claimant was otherwise eligible, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant separated from the temporary employment firm on January 10, 2022 upon completing an assignment and notified the employer within three working days of completing the assignment. A notice of hearing was mailed to the parties' last-known addresses of record for a telephone hearing scheduled for 8:00 a.m. on April 11, 2022. Neither party participated. Neither party complied with the hearing notice instructions to call the toll-free number at the time of the hearing. Based upon the employer/appellant's failure to participate in the hearing and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

ISSUE:

Whether the appeal should be dismissed based on the employer/appellant's failure to appear and participate.

FINDINGS OF FACT:

The employer is the appellant in this matter. The parties were properly notified of the scheduled hearing for this appeal. The employer/appellant failed to call the toll-free number listed on the hearing notice at the time of the hearing. The employer/appellant did not participate or request a postponement of the hearing as required by the hearing notice.

The hearing notice instruction advised parties of the date and time of hearing. It also stated:

IMPORTANT NOTICE!

YOU MUST CALL the toll-free number: **866-783-7021** at the time of the hearing. When instructed, enter the PIN Number ... followed by the pound key [#] and wait for the administrative law judge to begin the hearing.

The administrative law judge **WILL NOT** call you for the hearing, you **MUST** call into the number provided above to participate. **Failure to participate in the hearing may result in the dismissal of your appeal.**

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 will not call you to participate in the hearing. Instructions for participating are on the other side of this page. 871 IAC 26.14(7)

An insert was sent along with the hearing notice stating:

ATTENTION!

Instructions for participating in a hearing have changed.

Please review the enclosed hearing notice carefully and follow the instructions on how to join the call on the scheduled day and time of the hearing.

As a courtesy to the employer/appellant, the record was left open until 8:15 a.m. to give the employer/appellant a reasonable opportunity to participate.

On April 5, 2022, the employer's third-party representative entered contact information in the Clear2There system, a method of contact and communication no longer authorized for participation in appeal hearings. The employer representative included a brief note in the Clear2There entry, which note stated the employer withdrew the appeal and that the employer had faxed a written withdrawal request. The Appeals Bureau has not received a faxed withdrawal request. At the time of the hearing, the administrative law judge called the employer representative at the number entered in the Clear2There system. The representative did not answer. The administrative law judge left a voicemail message requesting a written withdrawal request, if the employer wished to withdraw the appeal. The administrative law judge deemed the Clear2There entry insufficient to meet the requirements for a written withdrawal request. The administrative law judge did not subsequently hear from the employer representative.

The February 23, 2022 (reference 01) unemployment insurance decision allowed benefits to the claimant, provided the claimant was otherwise eligible, and held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant separated from the temporary employment firm on January 10, 2022 upon completing an assignment and notified the employer within three working days of completing the assignment.

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:

(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 provided in Iowa Code section 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.

In this case, the employer/appellant did not call the toll-free number listed on the hearing notice at the time of the hearing. The employer/appellant is in default. The appeal should be dismissed.

If the employer/appellant disagrees with this decision, the employer/appellant may appeal the decision to the Employment Appeal Board pursuant to the instructions on the first page of this decision.

DECISION:

The employer defaulted on the appeal. The appeal is dismissed. The February 23, 2022 (reference 01) unemployment insurance decision that allowed benefits to the claimant, provided the claimant was otherwise eligible, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant separated from the temporary employment firm on January 10, 2022 upon completing an assignment and notified the employer within three working days of completing the assignment, remains in effect.



James E. Timberland
Administrative Law Judge
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April 14, 2022
Decision Dated and Mailed

jet/kmj