

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

THOMAS R KENNEDY
Claimant

DIAMOND JO LLC
Employer

APPEAL 19A-UI-03172-CL
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/24/19
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:

Claimant/appellant filed an appeal from the April 10, 2019, (reference 01) unemployment insurance decision that concluded claimant was not eligible for unemployment insurance benefits after a separation from employment. Notices of hearing were mailed to the parties' last known addresses of record for a hearing scheduled in Dubuque, Iowa, for July 11, 2019, at 9:00 a.m. The appellant failed to appear at the time and place specified on the hearing notice and no hearing was held.

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 hearing for this appeal. The appellant did not appear for the scheduled hearing at the specified time and place.

The hearing notice instruction specifically advises parties of the date, time, and location of the hearing. It also states:

IMPORTANT!

When you arrive at the hearing location, do not wait in line. You should immediately ask workforce center staff where to go for the hearing. On the scheduled date, you must be present at the location identified above and ready to participate in the hearing at the scheduled time. If you or one of your witnesses needs an interpreter, you should notify the Appeals Bureau immediately so that the Appeals Bureau can arrange for an interpreter for the hearing.

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. You can ask to participate in the in-person hearing via telephone. 871 IAC 26.6(4).

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 30 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 30 minutes or less. Allowing additional time would prejudice the non-appealing party for appearing in a timely manner.

The representative's decision had concluded that the claimant was not eligible for unemployment insurance 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. The statute further states that if a party makes a timely request to vacate the decision and shows good cause for failing to appear, the judge shall vacate the decision and conduct another hearing.

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

(6) If one or more parties which 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. If the appealing party fails to appear, the presiding officer may decide the party is in default and dismiss the appeal. The hearing may be reopened if the absent party makes a request in writing to reopen the hearing under subrule 26.8(3) and shows good cause for reopening 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.

If the appellant disagrees with this decision, a written request to reopen the record must be made to the administrative law judge 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 good cause reason that prevented the appellant from participating in the hearing at the scheduled time. The appellant also has the option to appeal the decision directly to the Employment Appeal Board, whose address is listed at the top right caption.

DECISION:

The April 10, 2019, (reference 01) unemployment insurance decision denying benefits remains in effect as the appellant is in default and the appeal is dismissed.

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

Decision Dated and Mailed

cal/scn