

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JEREMY L HEINLEN**  
Claimant

**ALS CORNER OIL CO**  
Employer

**APPEAL 18A-UI-07325-JC**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/17/18**  
**Claimant: Appellant (6)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
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:**

The claimant, Jeremy L. Heinlen, filed an appeal from the July 6, 2018, (reference 01) unemployment insurance decision that denied benefits based upon separation. Notice of the hearing was mailed to the parties' last-known addresses of record, for an in-person hearing in Carroll, Iowa to be held at 9:00 a.m. on August 10, 2018. The claimant/appellant failed to respond to the hearing notice instruction and appear for the hearing. A thirty minute grace period was extended as a courtesy to the claimant before the record was closed. The claimant/appellant did not appear or contact the Appeals Bureau. No request for postponement was made and no hearing was held.

**ISSUE:**

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

**FINDINGS OF FACT:**

The parties were properly notified of the scheduled hearing for this appeal. The claimant/appellant, Jeremy L. Heinlen, failed to respond to the hearing notice instruction and appear for the hearing nor did he request a postponement of the hearing as required by the hearing notice. The administrative law judge checked with Iowa Workforce Development staff to see if the claimant had checked in or contacted the office before closing the record. The record was held open 30 minutes to give the claimant a chance to appear, or alternately, contact the Appeals Bureau. No hearing was held.

The hearing notice instruction specifically advised the parties:

Date: FRI AUG 10, 2018  
Iowa Time: 9:00 a.m.  
Location:  
619 N. CARROLL ST  
CARROLL, IOWA 51401-2332

## **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.**

The back page of the hearing notice provided further instruction and warning:

### **Failure to Participate**

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 agency's decision concluded that the claimant was disqualified for unemployment insurance benefits.

## **REASONING AND CONCLUSIONS OF LAW:**

The Iowa Administrative Procedure 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.**

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.

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 instruction with ample opportunity to comply. See *Houlihan v. Emp't Appeal Bd.*, 545

N.W.2d 863 (Iowa 1996). Here, the clear directive is to read the hearing notice and go to the local office listed on the hearing notice to participate. Rules also do permit a party to participate by phone, if requested. The administrative record does not reflect that the claimant registered a phone number or requested to participate in the scheduled hearing by phone. Further, if the party misses the hearing, he or she may call the telephone numbers on the hearing notice. Due process requires notice and an opportunity to be heard, both of which were provided to each party. *The rule does not provide exceptions for good intentions and/or a party contacting the Appeals Bureau within a 'reasonable' or certain amount of time after the hearing is scheduled.*

The claimant/appellant, Jeremy L. Heinlen, appealed the unemployment insurance decision but failed to be available to participate in the scheduled hearing. The claimant/appellant has therefore defaulted on his appeal pursuant to Iowa Code § 17A.12(3) and Iowa Admin. Code r. 871-24.14(7), and the decision remains in force and effect.

If the claimant/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 request should be mailed to the administrative law judge at the address listed at the end of this decision and must explain the emergency or other good cause that prevented the appellant from participating in the hearing at the scheduled time.

**DECISION:**

The claimant/appellant is in default and the appeal is dismissed. The unemployment insurance decision dated July 6, 2018, (reference 01) denying benefits remains in effect.

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Jennifer L. Beckman  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

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Decision Dated and Mailed

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