IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

JASON E BELLINGER Claimant **WALMART INC** Employer	**APPEAL 21A-UI-16343-JC-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 04/25/21** **Claimant: Respondent (6)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview
Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

Employer filed an appeal from the July 15, 2021, (reference 01) unemployment insurance decision that allowed benefits. Iowa Workforce Development mailed a notice of hearing to employer's last address of record. The hearing was scheduled for September 15, 2021, at 10:00 a.m. Employer did not provide a telephone number to the Appeals Bureau prior to the scheduled hearing. Employer attempted to call a witness listed within the employer's appeal letter but there was no answer or opportunity to leave a voicemail. A grace period was extended to allow employer/appellant to contact the Appeals Bureau when a call was not received before the record was closed.

ISSUE:

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

FINDINGS OF FACT:

Iowa Workforce Development notified employer of the hearing. The employer did not respond to the hearing notice or otherwise provide a telephone number to the Appeals Bureau. Employer did not participate in the hearing or request a postponement. Employer did not follow the instructions on the hearing notice. Official notice is taken of the hearing control screen to establish that employer did not provide a telephone number to the Appeals Bureau prior to the time of the scheduled hearing.

The hearing notice instruction specifically advises employer 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:

> **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 does not have a phone number for this hearing unless you provide it to us 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. 871 IAC 26.14(7).

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

As a courtesy to the employer, the administrative law judge left the record open for 15 minutes past the scheduled time of the hearing to give the employer a reasonable amount of time to call the Appeals Bureau to participate. Employer did not contact the Appeals Bureau or otherwise register for the hearing during that time period.

The initial unemployment insurance decision allowed 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.

Iowa Admin. Code r. 871-26.14(7) provides, in relevant part:

> (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 provide in Iowa Code section 17A.12(3).

In this case, employer failed to provide a telephone number to the Appeals Bureau prior to the scheduled hearing. Employer is in default and the appeal is dismissed.

If the employer disagrees with this decision, the employer may appeal the decision directly to the Employment Appeal Board, whose address is listed at the top right caption.

DECISION:

The July 15, 2021, (reference 01) unemployment insurance decision allowing benefits remains in effect as the appellant is in default.

Jennifer L. Beckman

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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

September 16, 2021
Decision Dated and Mailed

jlb/mn