

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ERICA J SHAW
Claimant

APPEAL NO: 21A-UI-03262-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEABOARD TRIUMPH FOODS LLC
Employer

OC: 08/23/20
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:

The claimant filed a late appeal from the December 7, 2020, reference 02, decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant was discharged on March 4, 2020 for violation of a known company rule. A notice of hearing was mailed to the parties' last-known addresses of record for a telephone hearing to be held at 10:00 a.m. on March 22, 2021. The employer registered a telephone number for the hearing and was available through Christina Scott. A review of the Appeals Bureau's conference call system indicates that the claimant/appellant, Erica Shaw, failed to respond to the hearing notice instructions to register a telephone number at which she could be reached for the hearing. The claimant provided a telephone number in her appeal form, but was not available at that number at the time of the hearing. Based upon the claimant/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:

Should the appeal be dismissed based upon the claimant/appellant not participating in the hearing?

FINDINGS OF FACT:

The claimant is the appellant in this matter. The claimant was properly notified of the appeal hearing set for 10:00 a.m. on March 22, 2021 through the hearing notice that was mailed to her last-known address of record on February 25, 2021. The claimant did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. The claimant's appeal notice was not returned to the Appeals Bureau. The claimant did not comply with the hearing notice instructions to register a telephone number at which she could be reached for the hearing. The claimant provided a telephone number in her appeal form. At the time of the hearing, the administrative law judge made two attempts to reach the claimant at the number she provided on the appeal form. On both attempts, the administrative law judge let the

call attempt continued for an extended period until the Clear2There system returned a message that there was not answer. There was no voicemail option. The administrative law judge left hearing record open until 10:15 a.m., at which time the administrative law judge closed the record and dismissed the employer.

The December 7, 2020, reference 02, decision disqualified the claimant for benefits and held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant was discharged on March 4, 2020 for violation of a known company rule. The claimant's appeal is on its face late. The decision included a December 17, 2020 appeal deadline. The appeal was filed on December 28, 2020.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Administrative Code rule 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 provide 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.

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 claimant/appellant appealed the representative's decision but failed to participate in the hearing. The claimant/appellant has therefore defaulted on her appeal pursuant to Iowa

Code §17A.12(3) and Iowa Admin. Code r. 871-24.14(7), and the representative's decision remains in force and effect.

DECISION:

The claimant defaulted on her appeal. The appeal is dismissed. The December 7, 2020, reference 02, decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant was discharged on March 4, 2020 for violation of a known company rule, remains in effect.



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

March 23, 2021
Decision Dated and Mailed

jet/lj

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>.