

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEVEN M BLAKE
Claimant

RED ROBIN INTERNATIONAL INC
Employer

**DIA APPEAL NO. 21IWDUI2087
IWD APPEAL NO. 21A-UI-07635**

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/12/20
Claimant: Appellant (6)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
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 March 15, 2021, the claimant/appellant, Steven Blake, filed an appeal from the March 2, 2021 (reference 02) unemployment insurance decision that determined he was not eligible for unemployment insurance benefits because of a voluntary quit. On April 16, 2021, a Notice of Telephone Hearing was mailed to the claimant's and employer's last known addresses of record for a telephone hearing to be held on May 3, 2021, at 8:30 AM. The notice instructed claimant and the employer to call a toll-free conference number at the assigned time. Because the claimant and employer both failed to follow the instructions on the notice of hearing, and were not available by calling in on the date and time scheduled for this appeal hearing, no hearing was held.

ISSUE:

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

FINDINGS OF FACT:

The appellant was properly notified of the scheduled hearing for this appeal. The appellant did not call into the conference call at the time scheduled for this appeal hearing as required by the hearing notice. The appellant did not request a postponement of the hearing. No hearing was held.

The hearing notice instruction specifically advises parties:

DATE: May 3, 2021
TIME: 8:30 AM Central Time
ALJ: Joseph Ferrentino (Email: joseph.ferrentino@dia.iowa.gov)
TOLL-FREE HEARING PHONE NUMBER: 1-855-532-3071

At the date and time of the hearing, all parties must call the toll-free hearing number listed above. Important additional instructions for participating in this hearing are on the next page of this Notice. Failure to appear and participate in the hearing may result in the entry of a default judgment.

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

It is your responsibility to call in for the hearing. The judge will not call you. If you do not call using the above instructions, you will not be able to participate in the hearing. If you have technical difficulties connecting at the time of hearing, please call (515) 281-6468.

The record was left open for a grace period of 15 minutes after the hearing start time to give the appellant a reasonable opportunity to participate. Holding the appellant in default for failure to appear and participate during a 15 minute window after the hearing start time is reasonable considering the time allocated for each unemployment hearing. The appellant did not call in during the 15 minute grace period.

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.

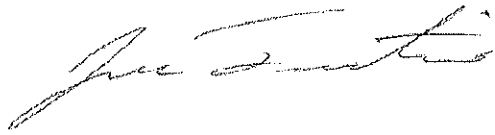
Agency rule Iowa Admin. Code r. 871-26.14(7) provides that if the appealing party has not responded to a notice of telephone hearing by providing the Appeals Bureau with the names and telephone numbers of the persons who are participating in the hearing *by the scheduled starting time of the hearing or is not available at the telephone number provided*, the judge 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 and shows good cause for reopening the hearing. The rule further states that *failure to read or follow the instructions on the notice of hearing is not good cause for reopening the record*. Iowa Admin. Code r. 871-26.14(7)(c). (Emphasis added.)

The appellant appealed the unemployment insurance decision but failed to participate in the hearing. The appellant has therefore defaulted on the appeal pursuant to Iowa Code section 17A.12(3) and Iowa Administrative Code rule 871-26.14(7), and the decision remains in force and effect.

If the appellant disagrees with this decision, a 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 claimant/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 March 2, 2021 (reference 02) unemployment insurance decision concluding that the claimant was not eligible for unemployment compensation benefits remains in effect as the appellant is in default. The appeal is dismissed.



Joseph Ferrentino
Administrative Law Judge
Department of Inspections and Appeals
Administrative Hearings Division

May 5, 2021
Decision Dated and Mailed

JF/lb

CC: Steven M. Blake, Claimant (by First Class Mail)
Red Robin International Inc, Employer (by First Class Mail)
Nicole Merrill, IWD (By Email)
Joni Benson, IWD (By Email)

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.