

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**KEVIN FRADIUE**  
Claimant

**ACRO SERVICE CORP.**  
Employer

**DIA APPEAL NO. 21IWDUI2118  
IWD APPEAL NO. 21A-UI-08746**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 3/22/21  
Claimant: Appellant (6)**

Iowa Code § 96.5(2)(a); 96.5(1) - Discharge for Misconduct; Voluntary Quit  
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default  
Iowa Code § 17A.12(3) – Default Decision

**STATEMENT OF THE CASE:**

The claimant/appellant, Kevin Fradiue, filed an appeal from the March 22, 2021 unemployment insurance decision that concluded Fradiue was not eligible for unemployment insurance benefits. Notice of hearing was mailed to the appellant's last known address of record for a telephone hearing scheduled for June 18, 2021. A Notice of Telephone Hearing mailed to the claimant on May 20, 2021, instructed Fradiue to call a toll-free conference number at the assigned time. Because the claimant failed to follow the instructions on the notice of hearing and was 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 but 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:** June 18, 2021  
**TIME:** 8:30 a.m. Central Time  
**ALJ:** Alla Mintzer Zaprudsky  
**TOLL-FREE HEARING PHONE NUMBER: 1-888-534-5033**

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. Allowing this additional time is more than reasonable under the circumstances. The unemployment insurance decision had concluded the claimant was not eligible for unemployment insurance benefits.

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

The Iowa Administrative Procedure Act at Iowa Code section 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.**

Agency rules at Iowa Admin. Code r. 26.14(7)(c) provides:

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 provided in Iowa Code § 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.

**c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.** (Emphasis added.)

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 call the toll-free hearing phone number at the listed hearing time. If the party has technical difficulties connecting to the hearing phone number, a second number ((515) 281-6468) is provided. 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.* It is assumed an appellant intends to participate in the hearing simply by the fact that an appeal is filed, but the appellant's responsibility does not end there. Each party is required to follow the

prominent specific written instructions printed on the hearing notice. The appellant filed the appeal and is held solely responsible for going forward with the case in a prompt and deliberate manner. The rule holds an appellant in default if not present *at the start* of hearing. As a courtesy, appellant was granted an additional 15-minute grace period not required by statute or rule.

Here, notwithstanding notice, opportunity and additional time, the appellant failed to prosecute the case at the appointed date and time without providing a good cause reason for the delay or failure to do so. Accordingly, the appellant is in default, and the appeal shall be dismissed. Iowa Code § 17A.12(3) and Iowa Admin. Code r. 26.14(7). The unemployment insurance decision remains in force and effect. If the appellant does not intend to pursue this appeal, the appellant need not take any action. If the appellant intends to pursue this appeal, the appellant must make a written request to the administrative law judge that the hearing be reopened 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 emergency or other good cause that prevented the appellant from participating in the hearing at its scheduled time. The appellant also has the option to appeal the decision directly to the Employment Appeal Board at the address listed in the caption appeal rights information.

**DECISION:**

The March 22, 2021 unemployment insurance decision concluding the claimant was not eligible for unemployment compensation benefits remains in effect, as the appellant is in default, and the appeal is dismissed.



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Alla Mintzer Zaprudsky  
Administrative Law Judge  
Department of Inspections and Appeals  
Administrative Hearings Division

June 21, 2021

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Decision Dated and Mailed

ARMZ: aa

CC: Kevin Fradiue (by first class mail)  
ACRO Service Corp. (by first class mail)  
Nicole Merrill (AEDMS)  
Joni Benson (AEDMS)

**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). PUA benefits will not be available beyond June 12, 2021. **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>.