

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MISTY M HERRING
Claimant

APPEAL NO. 21A-UI-25060-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAREWAY STORES INC
Employer

**OC: 09/26/21
Claimant: Appellant (6)**

Iowa Code Section 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, Misty Herring, filed a timely appeal from the November 3, 2021, reference 01, decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant was discharged on September 23, 2021 for theft of company property. A notice of hearing was mailed to the parties' last-known addresses of record for a telephone hearing scheduled for 1:00 p.m. on February 14, 2022. The employer was available for the hearing through Theresa McLaughlin and Steven Young. The claimant's counsel, Joseph Basque, appeared at the time of the hearing. The claimant did not appear. The claimant did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not appear. Based on the claimant/appellant's failure to appear for the hearing, that administrative law judge enters the following default decision.

ISSUE:

Whether the appeal should be dismissed based on the claimant/appellant's failure to appear and participate.

FINDINGS OF FACT:

The claimant, Misty Herring, is the appellant in this matter. The appeal hearing was originally set for January 10, 2022, but was rescheduled at the claimant's request. The hearing was reset for January 27, 2022, but was again rescheduled at the claimant's request. The hearing was reset to 1:00 p.m. on January 27, 2022, but was rescheduled a second time at the claimant's request. The hearing was then reset for February 14, 2022. The parties were properly notified of the February 14, 2022 rescheduled hearing by notice mailed on February 2, 2022.

The hearing notice instruction advised parties of the date and time of hearing. It also stated:

IMPORTANT NOTICE!

YOU MUST CALL the toll-free number: **866-783-7021** at the time of the hearing. When instructed, enter the PIN Number ... followed by the pound key [#] and wait for the administrative law judge to begin the hearing.

The administrative law judge **WILL NOT** call you for the hearing, you **MUST** call into the number provided above to participate. **Failure to participate in the hearing may result in the dismissal of your appeal.**

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 will not call you to participate in the hearing. Instructions for participating are on the other side of this page. 871 IAC 26.14(7)

The claimant/appellant failed to appear for the February 14, 2022 hearing. The claimant/appellant failed to call the toll-free number listed on the hearing notice at the time of the hearing. The claimant/appellant did not request a postponement of the hearing as required by the hearing notice.

At the time of the February 14, 2022 hearing, the employer appeared and the claimant's counsel appeared without the claimant. Claimant's counsel reported that he had been unable to make contact with the claimant since January 27, 2022, the second scheduled hearing date. The administrative law judge left the hearing record open until 1:15 p.m. to provide the claimant additional reasonable opportunity to appear for the hearing and to give claimant's counsel additional opportunity to attempt contact with the claimant. Claimant's counsel reported that his call to the claimant went to voicemail. When the claimant did not appear by 1:15 p.m., the administrative law judge closed the record and dismissed the participants at 1:16 p.m.

The November 3, 2021, reference 01, decision disqualified the claimant for benefits and relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant was discharged on September 23, 2021 for theft of company property.

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:

(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 provided 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.

In this case, the claimant/appellant did not call the toll-free number listed on the hearing notice at the time of the hearing. The appellant is in default. The appeal should be dismissed.

If the appellant disagrees with this decision, the appellant may appeal the decision to the Employment Appeal Board pursuant to the instructions on the first page of this decision.

DECISION:

The claimant defaulted on the appeal. The appeal is dismissed. The November 3, 2021, reference 01, decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant was discharged on September 23, 2021 for theft of company property, remains in effect.



James E. Timberland
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March 3 2022
Decision Dated and Mailed

jet/jh