

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES M KELLER

Claimant

1ST CLASS STAFFING LLC

Employer

APPEAL 20R-UI-05403-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/16/20

Claimant: Respondent (6)

Iowa Code § 96.5(1)J – VQ – Temporary Employment Firm
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation
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 March 25, 2020 (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on May 4, 2020. Claimant did not participate in the hearing because he failed to respond to the hearing notice and provide a telephone number at which he could be reached for the scheduled hearing. On May 11, 2020, a decision was issued in appeal number 20A-UI-02775-DB-T reversing the March 25, 2020 (reference 01) decision and denying benefits.

On May 21, 2020, claimant appealed to the Employment Appeal Board (EAB). On June 8, 2020, the EAB remanded this matter to the Appeals Bureau for a hearing on the merits. Upon remand, due notice was issued and a hearing was scheduled for July 8, 2020 at 8:00 a.m. A review of the Appeals Bureau's conference call system indicates that the appellant failed to respond to the hearing notice and provide a telephone number at which appellant could be reached for the scheduled hearing. The administrative law judge registered the appellant based upon information gathered from the appeal letter. The appellant was not available at the telephone number on the appeal letter; therefore, no hearing was held.

ISSUE:

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

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing for this appeal. The appellant did not register a telephone number at which it could be reached for the hearing. The administrative law judge registered the appellant based upon information gathered from the appeal letter. The appellant was not available at the telephone number listed on the appeal letter and did not participate in the hearing or request a postponement of the hearing as

required by the hearing notice. Official notice of the Clear2there hearing control screen is taken to establish that appellant did not register a telephone number for the hearing and did not answer when called at the number the administrative law judge registered from the appeal letter.

The hearing notice instruction specifically advises parties 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.

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 appellant the record was left open for a minimum 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 unemployment hearings.

The representative's decision concluded that claimant was eligible for unemployment insurance 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. 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.

Iowa Admin. Code r. 26.14(7) provides, in pertinent 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).

- 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.

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

DECISION:

The March 25, 2020 (reference 01) unemployment insurance decision allowing benefits remains in effect, as the appellant is in default and the appeal is dismissed.



Adrienne C. Williamson
Administrative Law Judge
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Fax (515)478-3528

July 16, 2020
Decision Dated and Mailed

acw/sam