

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**THOMAS ROHLF,**  
Claimant

**ACRO SERVICE CORP.,**  
Employer

**DIA APPEAL NO. 21IWDUI2001  
IWD APPEAL NO. 21A-UI-00863**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/08/20  
Employer: Appellant (6)**

Iowa Code § 96.4(3) – Able and Available  
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 employer/appellant, Acro Service Corp., filed an appeal from a December 2, 2020, unemployment insurance decision concluding the claimant, Thomas Rohlf, was eligible for unemployment insurance benefits. On February 10, 2021, a Notice of Telephone Hearing was mailed to the appellant's last known address for a telephone hearing scheduled for February 25, 2021. The Notice of Telephone Hearing instructed the employer to call a toll-free conference number on the assigned date and time. Because the employer did not call in on the date and time scheduled, no hearing was held.

**ISSUE:**

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

**FINDINGS OF FACT:**

The employer/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. The appellant did not request an additional postponement of the hearing. No hearing was held.

The hearing notice instruction specifically advised parties:

**DATE:** February 25, 2020  
**TIME:** 2:00 p.m. Central Time  
**ALJ:** Carla Hamborg  
**TOLL-FREE HEARING PHONE NUMBER: 1-866-770-6601**

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 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 § 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 the appealing party 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.)

A default will not be set aside for ordinary negligence or want of ordinary care. *See Houlihan v. Emp't Appeal Bd.*, 545 N.W.2d 863 (Iowa 1996). Here, the hearing notice clearly instructed the employer to call the toll-free hearing phone number at the listed hearing time. An alternative telephone number was provided if the employer experienced technical difficulties.

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.* The appellant's responsibility does not end with filing the appeal. Rather, each party is required to follow the written instructions printed on the hearing notice. The rule holds an appellant in default if not present *at the start* of hearing. As a courtesy, the appellant was granted an additional 15-minute grace period not required by statute or rule.

Here, the appellant failed to call in for the appeal at the scheduled 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 December 2, 2020, unemployment insurance decision concluding the claimant was eligible for unemployment compensation benefits remains in effect as the appellant is in default, and the appeal is dismissed.



Carla J. Hamborg  
Administrative Law Judge

February 26, 2021

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Decision Dated and Mailed

CJH:aa

cc: Thomas Rohlf (by first class mail)  
Acro Service Corp., Employer (by first class mail)  
Nicole Merrill (email)  
Joni Benson (email)