

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KATHLEEN W BENDER

Claimant

APPEAL 21A-UI-12043-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARKER, EDWIN, BARKER, ETHEL

Employer

OC: 05/10/20

Claimant: Appellant (6)

Iowa Code §96.6(2) – Timely Appeal
Iowa Code § 96.19(38) – Total and Partial Unemployment
Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

Kathleen W Bender, the claimant/appellant, filed an appeal from the August 24, 2020, (reference 01) unemployment insurance (UI) decision that concluded she was not eligible for REGULAR unemployment insurance (UI) benefits as of May 10, 2020. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for October 13, 2021. A review of the Appeals Bureau's conference call system indicates that Ms. Bender did not respond at the telephone number she provided at the time the hearing was scheduled to begin. The employer's representative was present and prepared to proceed with the hearing as scheduled. Because Ms. Bender did not make herself available at the time and date scheduled for the appeal hearing, no hearing was held.

ISSUE:

Should Ms. Bender's appeal be dismissed based on her not appearing and participating?

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing for this appeal. Ms. Bender did not answer the administrative law judge's call at the telephone number she provided at the time scheduled for this appeal hearing. She was not available at the telephone number she provided for the scheduled hearing. She did not request a postponement of the hearing. No hearing was held.

The hearing notice instruction advises parties in English and Spanish:

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 hearing notice lists the hearing date of October 13, 2021 and the hearing time as 11:00 a.m. Iowa time. The back page of the hearing notice provides further warning in both languages:

You must register a phone number for each hearing by following the instructions on the front of this notice.

...

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 use 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.

The record was left open for a grace period of 15 minutes after the hearing start time to give Ms. Bender a *reasonable* opportunity to participate. Allowing additional time would prejudice the non-appealing party for appearing in a timely manner. Holding Ms. Bender in default for not appearing and participating during a 15-minute window after the hearing start time is reasonable considering the time allocated for each unemployment hearing. Allowing this additional time period is more than reasonable under the circumstances.

The unemployment insurance decision had concluded that Ms. Bender was not eligible for REGULAR UI benefits as of May 10, 2020.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedures 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.

The Agency rules at Iowa Admin. Code r. 26.14(7) provide:

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). The record may be reopened if the absent party makes a request in writing to reopen the hearing under subrule 26.8(3) and shows good cause for reopening the hearing.

- 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.

Due process requires notice and an opportunity to be heard, both of which were provided to the parties. The appellant is responsible for going forward with the case in a prompt and thoughtful manner. The appellant must be present at the start of the hearing to avoid a default judgment. Iowa Code § 17A.12(3) and Iowa Admin. Code r. 26.14(7). The hearing notice instructs the parties to:

1. Read the hearing notice.
2. Register a telephone number where the party can be reached for the hearing.
3. Be available at that number at the date and time of the hearing.

The Iowa Supreme Court has held a default should not be set aside due to the appellant's negligence, carelessness, or inattention. See *Houlihan v. Emp't Appeal Bd.*, 545 N.W.2d 863 (Iowa 1996). Similarly, a default should not be set aside because the appellant has ignored clear requirements in the rules. Rather, a party must show it intended to proceed with the appeal and took steps to do so, but failed to appear because of some misunderstanding, accident, mistake or excusable neglect. Ms. Bender was not present at the start of the hearing. As a *courtesy*, Ms. Bender was granted additional time not required by statute or rule. The representative's decision remains in force and effect.

DECISION:

The August 24, 2020, (reference 01) unemployment insurance decision denying benefits as of May 10, 2020 remains in effect as Ms. Bender is in default and the appeal is dismissed.



Daniel Zeno
Administrative Law Judge

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October 15, 2021

Decision Dated and Mailed

dz/mn