

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NOELA K KABEYA
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 24A-UI-04514-AR

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/07/24
Claimant: Appellant (6)**

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 § 96.1A(37) – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Code § 17A.12(3) – Default Decision

STATEMENT OF THE CASE:

Noela K. Kabeya, the claimant/appellant,¹ appealed the Iowa Workforce Development (IWD) May 6, 2024, (reference 01) unemployment insurance (UI) decision. The decision denied claimant UI benefits based on the determination that she is not partially unemployed and therefore not able to and available for work. On May 14, 2024, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to the parties at each of their last known addresses of record for an in-person hearing at Cedar Rapids, Iowa, scheduled for May 28, 2024, at 1:00 p.m.

Claimant did not appear at the address listed on the hearing notice at the time the hearing was scheduled to begin. Because claimant filed the appeal but did not appear to participate, the administrative law judge did not hold a hearing.

ISSUE:

Should the appeal be dismissed because claimant did not appear and participate in the appeal hearing?

FINDINGS OF FACT:

The DIAL UI Appeals Bureau properly notified the parties of the scheduled hearing for this appeal. Claimant did not appear at the address listed on the hearing notice at the time scheduled for this appeal hearing. Claimant did not request a postponement of the hearing before the hearing date. Claimant did not appear before the record was closed 30 minutes after the hearing was scheduled to begin. The administrative law judge was available at the date and

¹ Claimant is the person who filed the UI claim with IWD. Appellant is the person or employer who filed the appeal.

time scheduled for the hearing. The administrative law judge did not hold a hearing because the claimant did not appear.

The hearing notice lists the hearing date as May 28, 2024, the hearing time as 1:00 p.m. Iowa time, and the hearing location as 4444 1st Ave NE, Lindale Mall #436, Cedar Rapids, Iowa. The hearing notice also advises the parties:

IMPORTANT NOTICE!

When you arrive at the hearing location, do not wait in line. You should immediately ask workforce center staff where to go for the hearing. On the scheduled date, you must be present at the location identified above and ready to participate in the hearing at the scheduled time. If you or one of your witnesses needs an interpreter, you should notify the Appeals Bureau immediately so that the Appeals Bureau can arrange for an interpreter for the hearing.

The administrative law judge left the record open after the hearing start time to give claimant a reasonable opportunity to participate. Allowing additional time may prejudice the non-appealing party. Holding claimant in default for not appearing and participating during the grace period after the hearing start time is reasonable considering the time allocated for each appeal hearing.

The UI decision concluded that claimant is not eligible to receive UI benefits because they are not considered at least partially unemployed under the meaning of the law.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedures Act at Iowa Code section 17A.12(3) provides, in relevant 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.

Iowa Admin. Code r. 871—26.14(6) provides:

(6) If one or more parties which received notice for a contested case hearing fail to appear at the time and place of an in-person hearing, the presiding officer may proceed with the hearing. If the appealing party fails to appear, the presiding officer may decide the party is in default and dismiss the appeal. The hearing may be reopened if no decision has been issued and 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 arrives for an in-person hearing while the hearing is in session, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If an absent party arrives for an in-person hearing after the record has been closed and after any party which had participated in the hearing has departed, the presiding officer shall not take the evidence of the late party.

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.² The hearing notice instructs the parties to proceed to the hearing location at the time the hearing is scheduled to begin.

Claimant did not appeal for the hearing and is in default. The appeal is dismissed, and the IWD UI decision remains in force and effect.

DECISION:

The May 6, 2024, (reference 01) UI decision denying benefits remains in effect as claimant is in default and this appeal is DISMISSED.



Alexis D. Rowe
Administrative Law Judge

May 29, 2024
Decision Dated and Mailed

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² Iowa Code § 17A.12(3) and Iowa Admin. Code r. 26.14(7).

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.