

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TYLER UNGS
Claimant

HAGENSICK LLC
Employer

APPEAL NO: 20A-UI-02912-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/12/20
Claimant: Appellant (6/R)

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.3(7) – Recovery of Overpaid Benefits
Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

Tyler Ungs filed a late appeal from the February 5, 2020, reference 03, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Mr. Ungs voluntarily quit on October 21, 2019 without good cause attributable to the employer. A notice of hearing was mailed to the parties' last-known addresses of record for a telephone hearing to be held at 9:00 a.m. on May 4, 2020. Mr. Ungs registered a telephone number for the hearing, but was not available at the registered number at the time of the hearing and did not participate. The employer did provide a telephone number for the hearing and did not participate. Based upon the claimant/appellant's failure to participate in the hearing and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

ISSUES:

Should the appeal be dismissed based upon the claimant/appellant not participating in the hearing?

Whether the claimant was overpaid benefits.

FINDINGS OF FACT:

The claimant, Tyler Ungs, is the appellant in this matter. The claimant was properly notified of the appeal hearing set for 9:00 a.m. on May 4, 2020 through the hearing notice that was mailed to his last-known address of record on April 16, 2020. The claimant did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. On April 28, 2020, the claimant registered a telephone number where he could be reached for the appeal hearing. At the time of the hearing, the administrative law judge made two attempts to reach the claimant at the registered number. On each attempt, the claimant did not answer and an automated message stated that the claimant's voicemail box had not been set up.

The February 5, 2020, reference 03, decision disqualified the claimant for benefits and relieved the employer's account of liability for benefits, based on the deputy's conclusion that Mr. Ungs voluntarily quit on October 21, 2019 without good cause attributable to the employer. The claimant's appeal is on its face late. The decision included a February 15, 2020 appeal deadline. The Appeals Bureau received the claimant's electronically transmitted appeal on April 7 2020.

Despite being disqualified for benefits pursuant to February 5, 2020, reference 03, decision, Iowa Workforce Development released funds to Mr. Ungs while his appeal was pending. The Agency made this decision in light of the COVID-19 pandemic and a resulting delay in scheduling appeals. The claimant made weekly claims and received \$1,835.00 in regular benefits for five weeks between March 22, 2020 and April 25, 2020. In addition, the claimant received \$600.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits for the week that ended April 11, 2020 and another \$600.00 in FPUC benefits for the week that ended April 25, 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.

Iowa Administrative Code rule 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 provide 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.

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.

Iowa Administrative Code rule 871-26.8(4) provides:

(4) A request to reopen a record or vacate a decision must be made in writing. If necessary, the presiding officer may hear, ex parte, additional information regarding the request for reopening. The granting or denial of such a request may be used as grounds for appeal to the employment appeal board of the department of inspections and appeals upon the issuance of the presiding officer's final decision in the case.

The claimant/appellant appealed the representative's decision but failed to participate in the hearing. The claimant/appellant has therefore defaulted on his appeal pursuant to Iowa Code §17A.12(3) and Iowa Admin. Code r. 871-24.14(7), and the representative's decision remains in force and effect.

Iowa Code § 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

Because the decision disqualifying the claimant for benefits has been affirmed, the \$1,835.00 in regular benefits that the claimant received for five weeks between March 22, 2020 and April 25, 2020 constitutes an overpayment of benefits. The claimant must repay the overpaid regular benefits.

This matter will be remanded to the Benefits Bureau for an additional overpayment decision concerning the \$1,200.00 in Federal Pandemic Unemployment Compensation (FPUC) the claimant received for the weeks that ended April 11 and April 25, 2020.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

DECISION:

The claimant defaulted on his appeal. The appeal is dismissed. The February 5, 2020, reference 03, 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 voluntarily quit on October 21, 2019 without good cause attributable to the employer, remains in effect. The claimant is overpaid \$1,835.00 in regular benefits for five weeks between March 22, 2020 and April 25, 2020. The claimant must repay the overpaid benefits.

This matter is remanded to the Benefits Bureau for an additional overpayment decision concerning the \$1,200.00 in Federal Pandemic Unemployment Compensation (FPUC) the claimant received for the weeks that ended April 11 and April 25, 2020.

Note to Benefits Bureau: The overpayment issues and amounts referenced in this appeal number will be duplicative to the overpayment issues and amounts referenced in Appeal Number 20A-UI-02911-JTT.



James E. Timberland
Administrative Law Judge

May 5, 2020
Decision Dated and Mailed

jet/scn