

Iowa Department of Inspections and Appeals
 Administrative Hearings Division
 Wallace State Office Building, Third Floor
 Des Moines, Iowa 50319

Inger D. Hall)	
3413 SE 20 th Street)	DIA Case No. 19IWDUI0003
Des Moines, Iowa 50320,)	IWD Appeal No. 18A-UI-11584
)	
Appellant,)	DEFAULT ORDER AND
)	ORDER TO SEAL RECORD
v.)	
)	OC:11/11/18
Iowa Workforce Development,)	Claimant: Appellant (6)
)	
Respondent.)	

STATEMENT OF THE CASE

On November 27, 2018 the Iowa Workforce Development (IWD) concluded Inger D. Hall was not eligible for unemployment insurance benefits. On November 29, 2018, the Appellant filed this appeal concerning the decision. On December 6, 2018, a Notice of Hearing was issued and sent to the Appellant at her last known address which was also listed in her appeal.

ISSUE

Whether Iowa Workforce Development properly determined that Inger Hall’s separation from employment was due to a violation of a known company rule.

FINDINGS OF FACT

The Notice of Hearing set this appeal for a telephone hearing on January 3, 2019, at 9:00 a.m. and instructed the Appellant to call in on a toll-free telephone number on that date and time. The Notice of Hearing warned: **“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.”** (Emphasis in original). Further, the notice stated: “Failure to appear and participate in the hearing may result in the entry of a default judgment.” It also advised in its detailed instructions for participating in the telephone hearing:

The judge will wait five minutes after the time the hearing is scheduled to start to allow all parties to call in. If you have not called

in by five minutes after the hearing is scheduled to start, the judge may enter a default judgment against you.

On the date and time of the telephone hearing, neither the Appellant nor any representative for the Appellant appeared by calling in to the toll-free telephone number within five minutes of the scheduled time of the hearing. IWD moved for a default decision or order, submitted the administrative record which was admitted without objection pursuant to Iowa Code §§ 17A.12(6) and 17A.14(2), and then moved to seal the record pursuant to Iowa Code § 96.11(6).

CONCLUSIONS OF LAW

Here, a default decision or order is appropriate. Section 17A.12(3) of the Iowa Code provides:

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, either enter a default decision or proceed with the hearing and make a decision in the absence of the party.

Likewise, Iowa Workforce Development administrative rules provide that the presiding officer may enter a default decision and dismiss the appeal if the appealing party “fails to appear.” Iowa Admin. Code r. 871-26.14(6).

Additionally, the IWD moved to seal the file as confidential pursuant to Iowa Code § 96.11(6). That statute states, in part:

- (1) The department shall hold confidential the information obtained from an employing unit or individual in the course of administering this chapter and the initial determination made by a representative of the department under section 96.6, subsection 2, as to the benefit rights of an individual. The department shall not disclose or open this information for public inspection in a manner that reveals the identity of the employing unit or the individual, except as provided in subparagraph (3) or paragraph “c”.
- (2) A report or statement, whether written or verbal, made by a person to a representative of the department or to another person administering this law is a privileged communication. A person is not liable for slander or libel on account of the report or statement unless the report or statement is made with malice.
- (3) Information obtained from an employing unit or individual in the course of administering this chapter and an initial determination made by a representative of the department under section 96.6, subsection 2, as to benefit rights of an individual shall not be used in

any action or proceeding, except in a contested case proceeding or judicial review under chapter 17A. However, the department shall make information, which is obtained from an employing unit or individual in the course of administering this chapter and which relates to the employment and wage history of the individual, available to a county attorney for the county attorney's use in the performance of duties under section 331.756, subsection 5, or section 602.8107. The department shall make such information electronically accessible to the county attorney at the county attorney's office, if requested, provided the county attorney's office pays the cost of the installation of the equipment to provide such access. Information in the department's possession which may affect a claim for benefits or a change in an employer's rating account shall be made available to the interested parties. The information may be used by the interested parties in a proceeding under this chapter to the extent necessary for the proper presentation or defense of a claim.

Iowa Code § 96.11(6)(b). “. . . A public official or an agent or contractor of a public official who receives information pursuant to this subsection or a third party other than an agent who acts on behalf of a claimant or employer and who violates this subsection is guilty, upon conviction, of a serious misdemeanor. . . .” Iowa Code § 96.11(6)(f). Accordingly, in the absence of an objection, a protective order sealing the contents of the administrative record and exhibits from disclosure is appropriate.

DECISION AND ORDER

The Respondent's motion for default decision is **granted**. The unemployment insurance decision is affirmed. The decision denying benefits remains in effect.

The Respondent's motion for a protective order sealing the administrative record is **granted**.

Dated and mailed this January 7, 2019.



Forrest Guddall
Administrative Law Judge

cc: Appellant Hall (By Mail)
Ryan West, IWD (By Email)
Elizabeth Waigand (By Email)
Ben Humphrey (By Email)
Christina Steen (By Email)
Emily Chafa, IWD (By Email)
Joni Benson, IWD (By Email)
Nicholas Olivencia, IWD (By Email)

PROCEDURAL AND APPEAL RIGHTS

An appellant may file a motion to reopen a record or vacate a default decision.

. . . If a decision has been issued, the decision may be vacated upon the presiding officer's own motion or at the request of a party within 15 days after the mailing date of the decision and in the absence of an appeal to the employment appeal board of the department of inspections and appeals. . . .

Iowa Admin. Code r. 871-26.8(3)(17A,96). The motion must be in writing.

A decision may be vacated for “good cause.”

. . . “Good cause“ for purposes of this rule is defined as an emergency circumstance that is beyond the control of the party and that prevents the party from being able to participate in the hearing. Examples of good cause include, but are not limited to, death, sudden illness, or accident involving the party or the party's immediate family (spouse, partner, children, parents, sibling) or other circumstances evidencing an emergency situation which was beyond the party's control and was not reasonably foreseeable. Examples of circumstances that do not constitute good cause include, but are not limited to, a lost or misplaced notice of hearing, confusion as to the date and time for the hearing, failure to follow the directions on the notice of hearing, oversleeping, or other acts demonstrating a lack of due care by the party.

Iowa Admin. Code r. 871-26.8(3)(17A,96). “. . . If a decision is vacated, notice shall be given to all parties of a new hearing to be held and decided by another presiding officer. . . .” *Id.*

“. . . Once a decision has become final as provided by statute, the presiding officer has no jurisdiction to reopen the record or vacate the decision. . . .” *Id.* “A presiding officer's decision shall

be the final decision of the department if there is no appeal therefrom to the employment appeal board of the department of inspections and appeals.” Iowa Admin. Code r. 871-26.2(17A,96).

This decision shall become final agency action unless the Appellant or any interested party appeals to the Employment Appeal Board within fifteen (15) days after the date of this decision by submitting a signed letter or a signed written Notice of Appeal by mail, personal delivery, or fax to:

Employment Appeal Board
Lucas State Office Building, 4th Floor
Des Moines, Iowa 50319
(515) 281-7191 (fax)

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 Employment Appeal Board must:

- Include the name, address, and social security number of the claimant;
- Reference the decision from which the appeal is taken;
- Clearly state that an appeal from such decision is being made;
- Clearly state the grounds upon which such appeal is based; and
- Be signed by the party appealing.

On appeal to the Employment Appeal Board, the Appellant may represent himself or herself or may obtain the assistance of an attorney or another representative at the Appellant’s own expense. The Appellant may qualify for free legal assistance from Iowa Legal Aid. To apply, call Iowa Legal Aid at **(800) 532-1272** or visit **www.iowalegalaid.org**. More information about obtaining legal advice is also available on the Administrative Hearings Division website at **http://dia.iowa.gov/ahd/**. The claimant should continue to file weekly claims for unemployment insurance benefits while the appeal is pending. A claimant can only receive benefits for the weeks he or she filed a valid claim.