

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

Michelle R Swan

)
)
) DIA Case No. 22IWDUI0113, 4
) IWD Appeal No. 22A-UI-06568, 06574
)

Appellant,

)
) **PROPOSED DEFAULT DECISION**
)

v.

Iowa Workforce Development
Quality Control

)
)
) OC: May 2, 2021
) Claimant: Appellant (1)
)
)

Respondent.

STATEMENT OF THE CASE

The Appellant filed this appeal concerning a decision of the Iowa Workforce Development. On May 5, 2022, two Notices of Hearing were issued and sent to the Appellant. The Notices of Hearing set the appeal for a telephone hearing on June 8, 2022, at 8:30 and 10:00 a.m. and instructed the Appellant to call in on a toll-free telephone number on that date and time. The Notices of Hearing warned: "Failure to appear and participate in the hearing may result in the entry of a default judgment." They also advised in their 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 to participate in the hearing by calling in to the toll-free telephone number within five minutes of the scheduled time of the hearing.

CONCLUSIONS OF LAW

Section 17A.12(3) of the Iowa Code provides:

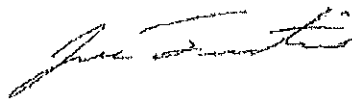
If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, either enter a default decision or proceed with the hearing and make a decision in the absence of the party.

Likewise, Iowa Workforce Development administrative rules provide that the presiding officer may enter a default decision and dismiss the appeal if the appealing party "is unavailable for the hearing" Iowa Admin. Code r. 871-26.14(7). Because the Appellant failed to appear and failed to participate in the telephone hearing, the entry of a default decision in this case is appropriate. **The Appellant may request a new hearing by following the instructions under "Appeal Rights" below.**

ORDER

The Appellant is in default and the appeal is dismissed. The Department shall proceed as if no appeal had been filed and shall take any action necessary to implement this decision.

Dated and mailed this June 9, 2022.



Joseph Ferrentino
Administrative Law Judge

cc: Michelle R Swan, Claimant (by First Class Mail)
Iowa Workforce Development, Quality Control (by First Class Mail)
Natali Atkinson, IWD (By Email)
Joni Benson, IWD (By AEDMS)

APPEAL RIGHTS

This decision shall become final agency action and the Appellant will not have a hearing on this appeal unless the Appellant asks to schedule a new hearing by filing a motion to vacate the default decision. A motion to vacate must be filed within fifteen (15) days by mail and must state in writing "good cause" for failing to attend the hearing. *See* Iowa Admin Code r. 871-26.8(3). "Good cause" is defined in Iowa Workforce Development rules "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." Iowa Admin. Code r. 871-26.8(3). A copy of the motion to vacate must also be sent to Iowa Workforce Development.

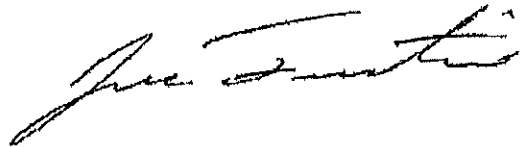
The motion to vacate must be filed with the presiding officer by submitting to the Administrative Hearings Division by delivery or mail at Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319, by email to adminhearings@dia.iowa.gov, or by fax to (515) 281-4477.

NOTICE

The claimant should continue to file weekly claims for unemployment insurance benefits while the motion to vacate is pending. A claimant can only receive benefits for the weeks he or she filed a valid claim.

Case Title: SWAN V. IOWA WORKFORCE DEVELOPMENT, QUALITY
CONTROL
Case Number: 22IWDUI0114
Type: Order - Abandonment/Default

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Joe Ferrentino", written in a cursive style.

Joseph Ferrentino, Administrative Law Judge