

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAVID J BENNETT

Claimant

YAGER AUTO BODY INC

Employer

APPEAL 22A-UI-05379-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/20/19

Claimant: Appellant (6)

Iowa Code § 96.4(3) – Able & Available
Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

On February 18, 2022, David Bennett (claimant) filed a late appeal from the November 12, 2019, (reference 01) unemployment insurance decision that denied benefits effective October 20, 2019, based on the deputy's conclusion that the claimant was still employed for the same hours and wages and could not be deemed partially unemployed. A notice of hearing was mailed to the parties' last-known addresses of record for a telephone hearing scheduled for 1:00 p.m. on April 11, 2022. There were five appeal numbers set for a consolidated hearing: 22A-UI-05379-JT-T, 22A-UI-05380-JT-T, 22A-UI-05381-JT-T, 22A-UI-05382-JT-T and 22A-UI-05383-JT-T. The employer complied with the hearing notice instructions to call the toll-free number at the time of the hearing and was available for the hearing through Mike Yager. The claimant did not comply with the hearing notice instructions to call the toll-free number at the time of the hearing and did not participate in the appeal hearing. 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.

ISSUE:

Whether the appeal should be dismissed based on the claimant/appellant's failure to appear and participate.

FINDINGS OF FACT:

The claimant is the appellant in this matter and in four other appeal numbers set for a consolidated hearing. The parties were properly notified of the scheduled hearing for this appeal. The claimant/appellant failed to call the toll-free number listed on the hearing notice at the time of the hearing. The appellant did not participate or request a postponement of the hearing as required by the hearing notice.

The hearing notice instruction advised parties of the date and time of hearing. It also stated:

IMPORTANT NOTICE!

YOU MUST CALL the toll-free number: **866-783-7021** at the time of the hearing. When instructed, enter the PIN Number ... followed by the pound key [#] and wait for the administrative law judge to begin the hearing.

The administrative law judge **WILL NOT** call you for the hearing, you **MUST** call into the number provided above to participate. **Failure to participate in the hearing may result in the dismissal of your appeal.**

The back page of the hearing notice provides further instruction and warning:

Failure to Participate or Register for Appeal Hearing

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 will not call you to participate in the hearing. Instructions for participating are on the other side of this page. 871 IAC 26.14(7)

An insert was sent along with the hearing notice stating:

ATTENTION!

Instructions for participating in a hearing have changed.

Please review the enclosed hearing notice carefully and follow the instructions on how to join the call on the scheduled day and time of the hearing.

As a courtesy to the appellant, the record was left open until 1:30 p.m. to give the appellant a reasonable opportunity to participate.

The November 12, 2019 (reference 01) unemployment insurance decision denied benefits effective October 20, 2019, based on the deputy's conclusion that the claimant was still employed for the same hours and wages and could not be deemed partially unemployed.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedure Act at Iowa Code § 17A.12(3) provides that if a party fails to appear or participate in a hearing after proper service of notice, the judge may enter a default decision or proceed with the hearing and make a decision in the absence of the party.

Iowa Admin. Code r. 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 provided 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.

In this case, the claimant/appellant did not call the toll-free number listed on the hearing notice at the time of the hearing. The appellant is in default. The appeal should be dismissed.

If the appellant disagrees with this decision, the appellant may appeal the decision to the Employment Appeal Board pursuant to the instructions on the first page of this decision.

DECISION:

The claimant defaulted on the appeal. The appeal is dismissed. The November 12, 2019, (reference 01) unemployment insurance decision that denied benefits effective October 20, 2019, based on the deputy's conclusion that the claimant was still employed for the same hours and wages and could not be deemed partially unemployed, remains in effect.



James E. Timberland
Administrative Law Judge
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April 15, 2022
Decision Dated and Mailed

jet/scn