

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LYNDSAY D BOYD

Claimant

THOMAS L CARDELLA & ASSOCIATES INC

Employer

APPEAL 20A-UI-02034-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/26/20

Claimant: Respondent (6)

Iowa Code § 96.5(2)a – Discharge for Misconduct

Iowa Code § 96.5(1) – Voluntary Quitting

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

Iowa Code § 17A.12(3) – Default Decision

Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

The employer/appellant, Thomas L. Cardella & Associates Inc., filed an appeal from the February 24, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits.

Notice of the hearing was mailed to the parties’ last known addresses of record for a telephone hearing to be held at 8:00 a.m. on April 20, 2020. A review of the Appeals Bureau’s conference call system after 8:15 a.m. the same day shows the employer/appellant failed to be available when called for the scheduled hearing. The employer registered two phone numbers for its employer witness, Myka Gilchrist. Both numbers were called at the time of hearing, and voicemail was provided for both numbers, directing the employer to call the Appeals Bureau immediately if it wanted to participate in the scheduled hearing. A grace period was extended to allow the employer to respond before the record was closed. No hearing was held.

ISSUE:

Should the appeal be dismissed based on the employer/appellant’s failure to appear and participate?

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing for this appeal. The employer/appellant, failed to be available when called at the time scheduled for this appeal hearing as required by the hearing notice. The employer/appellant did not request a postponement of the hearing. No hearing was held.

The hearing notice instruction specifically advised the parties:

Date: MON APR 20, 2020

Iowa Time: 8:00 a.m.

The back page of the hearing notice provided further warning:

Register/Appeal Hearing Procedure

You must register a phone number for each hearing by following the instructions on the front of this notice.

Failure to Participate

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 does not have a phone number for this hearing unless you provide it to us by following the instructions on the other side of this page. If you do not follow those instructions the judge will not call you for the hearing. 871 IAC 26.14(7).

The agency's decision concluded that the claimant was allowed unemployment insurance benefits.

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.

The Agency rules at Iowa Admin. Code r. 26.14(7) provide:

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 in writing to reopen the hearing 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.

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. Iowa Code § 17A.12(3) and Iowa Admin. Code r. 26.14(7). The hearing notice instructs the parties to:

1. Read the hearing notice.
2. Register a telephone number where the party can be reached for the hearing.
3. Be available at that number at the date and time of the hearing.

The Iowa Supreme Court has held a default should not be set aside due to the appellant's negligence, carelessness, or inattention. See *Houlihan v. Emp't Appeal Bd.*, 545 N.W.2d 863 (Iowa 1996). Similarly, a default should not be set aside because the appellant has ignored clear requirements in the rules. Rather, a party must show it intended to proceed with the appeal and took steps to do so, but failed to appear because of some misunderstanding, accident, mistake or excusable neglect. The employer/appellant was not present at the start of the hearing. As a *courtesy*, appellant was granted additional time not required by statute or rule. The representative's decision remains in force and effect.

DECISION:

The employer/appellant is in default and the appeal is dismissed. The unemployment insurance decision dated February 24, 2020, (reference 01) allowing benefits remains in effect.



Jennifer L. Beckman
Administrative Law Judge
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Fax 515-478-3528

April 20, 2020
Decision Dated and Mailed

jlb/scn