

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
Division of Administrative Hearings
Wallace State Office Building
Des Moines, Iowa 50319

Appeal Number: 1
13IWDUI072-74
OC: 01/08/12
Claimant: Appellant (2)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed Notice of Appeal, directly to the **Employment Appeal Board, 4TH Floor Lucas Building, Des Moines, Iowa 50319.**

JESUS LOPEZ
1316 BUCHANAN STREET
DES MOINES IA 50316-3458

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.

STATE CLEARLY

IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS AND RECOVERY
IRMA LEWIS, INVESTIGATOR

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

JOE WALSH, IWD

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to the department. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

April 12, 2013

(Decision Dated & Mailed)

Iowa Code section 17A.12(3) – Default
871 Iowa Administrative Code 26.14(6)-(7) – Failure to Appear

STATEMENT OF THE CASE

The claimant filed an appeal of a representative's decision dated February 4, 2013, reference O3. A Notice of Telephone Hearing was mailed to all parties on February 13, 2013 setting a hearing date of April 1, 2013 at 9:00 AM. The notice contained instructions regarding how to participate in the telephone hearing. The Department did not call in to participate in the hearing at the date and time indicated. The claimant did call in to participate.

The Iowa Administrative Procedure Act provides that if a party fails to appear or

participate in a contested case proceeding after proper service of notice, the presiding officer may enter a default decision.¹ Iowa Workforce Development regulations give the presiding officer discretion regarding whether to proceed with a hearing in the absence of one or more of the parties.² In this case, a hearing was not held and a default decision was entered.

Without the participation of the Department it is difficult to ascertain how the Department came to its decision. Without this explanation the administrative law judge determines that the Department has not carried its burden proof to establish that:

1. Whether there was an overpayment of unemployment benefits;
2. Whether the overpayment was a result of misrepresentation;
3. Whether the claimant is ineligible to receive unemployment insurance benefits;
4. Whether the claimant failed to establish justifiable good cause for failing to report to a meeting with the investigator at the Des Moines local office.

DECISION

The Department's decision dated February 4, 2013 is REVERSE. The Department shall take any action necessary to implement this decision.

jmp

¹ Iowa Code § 17A.12(3).

² 871 Iowa Administrative Code 26.14(6)-(7).