

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JEREMIAH MLELWA
Claimant

WHIRLPOOL CORPORATION
Employer

APPEAL 19A-UI-08470-SC-T
**ORDER DENYING REQUEST TO
POSTPONE HEARING AND
ADMINISTRATIVE LAW JUDGE DECISION**

OC: 07/07/19
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 Admin. Code r. 871-26.8 - Withdrawals, Dismissals, and Postponements
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 October 28, 2019, (employer/appellant) filed an appeal from the October 18, 2019, reference 04, unemployment insurance decision that concluded Jeremiah Mlelwa (claimant) was eligible for unemployment insurance benefits. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for November 21, 2019, at 8:00 a.m. A review of the Appeals Bureau's conference call system indicates that the appellant failed to register a telephone number where they could be reached for the scheduled hearing and no hearing was held.

ISSUES:

Should the appellant's November 20, 2019 request to postpone the hearing be granted?
Should the appeal be dismissed based on the appellant's failure to appear and participate?

FINDINGS OF FACT:

The unemployment insurance decision stated that the claimant was eligible for unemployment insurance benefits. On November 1, 2019, the Appeals Bureau mailed notice of the hearing to be held on November 21 to the parties' last known address of record.

On November 20, the appellant made a request to postpone the hearing. The stated reason was, "The employer's first hand witness is unable to participate in this hearing because she has a hearing scheduled before this one and she is afraid it will run over." (Employer's Request to Postpone). The administrative record shows the only hearings scheduled for the appellant with Iowa Workforce Development (IWD) on Thursday, November 21, 2019 were scheduled with the same administrative law judge (ALJ) at 8:00 a.m., 10:00 a.m., 11:00 a.m., 1:00 p.m., and 2:00 p.m. IWD does not routinely scheduled hearings before 8:00 a.m.

The back page of the hearing notice provides instructions for requesting a postponement:

If you need a different hearing date or time, send a written request to the Appeals Bureau, at least three days before the scheduled hearing date. Tell us why you need a new hearing date or time and include any dates you are not available for a rescheduled hearing. 871 IAC 26.8.

The information quoted above also appears on the hearing notice in Spanish.

The appellant failed to register a telephone number where they could be reached for the scheduled hearing or to further discuss the late request to postpone the hearing. Official notice of the Clear2there hearing control screen is taken to establish that appellant did not call or register online with the Appeals Bureau to provide a telephone number and/or name of a representative.

The hearing notice instruction specifically advises parties of the date and time of the hearing. It also states:

IMPORTANT NOTICE!

YOU MUST PROVIDE YOUR PHONE NUMBER TO THE APPEALS BUREAU AS SOON AS POSSIBLE. If you do not follow these instructions, the judge will not call you for the hearing. You must also provide the name(s) and phone number(s) of any witnesses to the Appeals Bureau.

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

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)

As a courtesy to the appellant the record was left open for a minimum of 15 minutes after the hearing start time to give them a reasonable opportunity to participate. This reasonable amount of time is appropriate because if a hearing were conducted with the non-appealing party alone it would have likely concluded in 15 minutes or less.

REASONING AND CONCLUSIONS OF LAW:

I. Should the appellant's November 20, 2019 request to postpone the hearing be granted?

For the reasons that follow, the appellant's request to postpone the hearing is denied.

Iowa Admin. Code r. 871-26.8 provides, in relevant part:

Withdrawals, dismissals, and postponements.

...

(2) A hearing may be postponed by the presiding officer for good cause, either upon the presiding officer's own motion or upon the request of any party in interest. A party's request for postponement may be in writing or oral, provided

the oral request is []recorded by the presiding officer, and is made not less than three days prior to the scheduled hearing. A party shall not be granted more than one postponement except in the case of extreme emergency.

(3) If, for good cause, a party, having received due notice, is unable to attend a hearing or request postponement within the prescribed time, the presiding officer may, if no decision has been issued, reopen the record and, with notice to all parties, schedule another hearing. 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. 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. Once a decision has become final as provided by statute, the presiding officer has no jurisdiction to reopen the record or vacate the decision.

"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.

The appellant's request to postpone the hearing was not filed more than three days before the hearing and they have not provided a good cause reason for the late request. Additionally, even if the request had been made in a timely manner, the appellant has not established good cause to postpone the hearing as the hearings are all with the same ALJ and there were no hearings scheduled prior to 8:00 a.m.

It is so ordered, the appellant's request to postpone the hearing is denied.

II. Should the appeal be dismissed based on the appellant's failure to appear and participate?

For the reasons that follow, the ALJ concludes the appellant is in default and the appeal is dismissed.

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) provides:

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 judgement. 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.

If these instructions are not followed, the appealing 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 Iowa Supreme Court has held a default decision should be upheld when the absence of the appellant was 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 be upheld when the appellant has ignored clear requirements in the rules.

In this case, the appellant did not register a phone number for the hearing. The appellant has not established that a witness could not be available due to a misunderstanding, accident, mistake, or excusable neglect. They were given ample notice of the hearing, which was received, and there were no other hearings scheduled prior to 8:00 a.m.

As a courtesy, to allow for any additional misunderstandings or mistakes, the appellant was granted additional time not required by statute or rule. However, the appellant did not contact the Appeals Bureau during the additional time allotted. Therefore, the appellant is in default, the appeal is dismissed, and the representative's decision remains in force and effect.

Pursuant to the rule, the appellant may make a written request to the administrative law judge that the hearing be reopened, but must do so within 15 days after the mailing date of this decision. The written request should be mailed to the administrative law judge at the address listed at the end of this decision and must explain the emergency or other good cause that prevented the appellant from participating in the hearing at its scheduled time. The appellant also has the option to appeal the decision directly to the Employment Appeal Board, whose address is listed at the top right caption.

DECISION:

The appellant's request to postpone the hearing is denied. The October 18, 2019, reference 04, unemployment insurance decision allowing benefits remains in effect as the appellant is in default and the appeal is dismissed.

Stephanie R. Callahan
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed

src/scn