

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KIMBERLY J PEARSON
Claimant

CHRISTIAN RETIREMENT SERVICES INC
Employer

APPEAL 19A-UI-03039-LJ
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/10/19
Claimant: Appellant (6)

Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(6) – Dismissal of Appeal on Default
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

An appeal was filed from an unemployment insurance decision dated April 2, 2019, (reference 01) that denied benefits based upon a determination that claimant was discharged for violation of a known company rule. Notice of hearing was mailed to the parties' last known addresses of record for a hearing to be held in Cedar Rapids, Iowa, at 1:00 p.m. on Wednesday, May 15, 2019. The claimant/appellant failed to appear in response to the hearing notice instruction and no hearing was held.

ISSUE:

Should the appeal be dismissed based upon the appellant not responding to the hearing notice instruction and not appearing for the scheduled hearing?

FINDINGS OF FACT:

The party was properly notified of the scheduled hearing on this appeal. The claimant/appellant requested the in-person hearing, failed to respond to the hearing notice instruction to appear for the scheduled hearing at 1:00 p.m., and did not request a postponement of the hearing. The unemployment insurance decision concluded that the claimant/appellant is not eligible for unemployment insurance benefits.

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

IMPORTANT!

When you arrive at the hearing location, do not wait in line. You should immediately ask workforce center staff where to go for the hearing. On the scheduled date, you must be present at the location identified above and ready to participate in the hearing at the scheduled time. If you or one of your witnesses needs an interpreter, you should notify the Appeals Bureau

immediately so that the Appeals Bureau can arrange for an interpreter for the hearing.

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 or witness(es). You can ask to participate in the in-person hearing via telephone. 871 IAC 26.6(4).

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

As a *courtesy* to the appellant the record was left open for a minimum of 15 minutes after the hearing start time to give the appellant 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. Allowing additional time would prejudice the non-appealing party for appearing in a timely manner.

The 15 minute wait time is also a reasonable period to hold the record open as insufficient time would remain to conduct a quality due process hearing in the time allotted by the Appeals Bureau. Each hearing is allowed 60 minutes. Holding the appellant in default for failure to appear and participate during a 15 minute window after the hearing start time is entirely reasonable considering the time allocated for unemployment hearings.

The representative's decision had concluded that the claimant is not eligible for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedure Act at Iowa Code section 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(6) provides:

(6) If one or more parties which received notice for a contested case hearing fail to appear at the time and place of an in-person hearing, the presiding officer may proceed with the hearing. If the appealing party fails to appear, the presiding officer may decide the party is in default and dismiss the appeal. The hearing 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 arrives for an in-person hearing while the hearing is in session, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If an absent party arrives for an in-person hearing after the record has been closed and after any party which had participated in the hearing has departed, the presiding officer shall not take the evidence of the late party.

The appellant appealed the unemployment insurance decision but failed to appear to participate in the hearing. The appellant has therefore defaulted on the appeal pursuant to Iowa Code

section 17A.12(3) and Iowa Admin. Code r. 871-26.14(6), and the unemployment insurance decision remains in force and effect.

DECISION:

The appellant is in default and the appeal is dismissed. The unemployment insurance decision dated April 2, 2019, (reference 01) denying benefits remains in effect.

Elizabeth A. Johnson
Administrative Law Judge
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Decision Dated and Mailed

lj/scn