

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

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**JESSE E JENNINGS**  
Claimant

**DUSTAR EXPRESS INC**  
Employer

**APPEAL 23A-UI-03685-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/05/23  
Claimant: Respondent (6)**

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Iowa Code § 96.6(2) - Timeliness of Protest  
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, Dustar Express Inc., filed a timely appeal from the April 4, 2022, reference 04, decision that granted benefits and found the protest untimely. After due notice, a telephone hearing was scheduled for April 24, 2023 at 10:00 a.m. Prior to this hearing on April 18, 2023, the claimant requested postponement so he could retain an attorney. Administrative Law Judge Duane Golden granted this postponement.

An in-person hearing was scheduled for May 18, 2023 at 10:00 a.m. On April 20, 2023, the claimant made an additional request for an in-person hearing to be scheduled.

After due notice was issued, an in-person hearing was scheduled to be held on May 24, 2023 at the IowaWORKS Center at 2508 E 14th Street in Sioux City, Iowa 51101-2298 at 10:00 a.m. The claimant arrived to participate personally. The claimant was represented by Grant Beckwith, attorney-at-law. Two interns from Iowa Legal Aid observed the preparation for the hearing. Previous notices stated the issue regarded separation from employment. This administrative law judge changed the hearing notice to reflect that the employer appealed reference 04, a granting of benefits due to an untimely protest rather than an employer's appeal to that same separation determination.<sup>1</sup>

While awaiting the appellant's arrival, the administrative law judge informed those present the scope of relevance for a protest case, as well as show them administrative records that he would take official notice of. A review of the Appeals Bureau's conference call system indicates that the appellant failed to arrive to participate in person or request to participate by phone. Because the appellant failed to follow the instructions on the notice of hearing, no hearing was held.

**ISSUE:**

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

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<sup>1</sup> As explained on the hearing record, the determination of whether a protest to the notice of claim is timely must be determined prior to the underlying separation, assuming the agency has issued a decision granting benefits with that reasoning. The separation is only evaluated if the protest is found timely or otherwise timely on appeal by the administrative law judge.

## **FINDINGS OF FACT:**

The appellant was properly notified of the scheduled hearing for this appeal. The appellant failed to either arrive and participate in person or request to participate via telephone.

The hearing notice instruction specifically advised the parties to be present at the IowaWORKS Center at 2508 E 14th Street in Sioux City, Iowa 51101-2298 on May 24, 2023 at 10:00 a.m. It further instructed the parties as follows:

### **IMPORTANT NOTICE!**

**When you arrive at the hearing location, do not wait in line. You should immediately ask workforce staff where to go for the hearing.** On the scheduled date, you must be present at the location identified and ready to participate in the hearing at the scheduled time.

The hearing notice lists the hearing date and time. The back page of the hearing notice provides further warning stating “If you do not participate in the hearing, the judge may dismiss the appeal or issue a decision without considering your evidence. You can ask to participate in the in-person hearing via telephone.” This is a reference to Iowa Admin. Code r. 871-26.6(4).

The back page of the hearing notice also provides the following information regarding requests for 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 and time and include any dates you are not available for a rescheduled hearing.” This is a reference to Iowa Admin. Code r. 871-26.6(8).

The record was left open for a period after the initial hearing start time to give the appellant a *reasonable* opportunity to participate. Holding the appellant in default for failure to appear and participate during the grace period after the hearing start time is entirely reasonable considering the time allocated for unemployment hearings.

The April 4, 2023, (reference 04) decision determined the employer’s protest was untimely filed. It granted benefits, provided the claimant is otherwise eligible for benefits.

## **REASONING AND CONCLUSIONS OF LAW:**

The Iowa Administrative Procedures 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 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.

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.

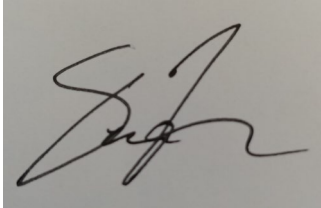
b. If an absent party arrives for an in-person hearing after the record has been closed and after any party which had participated in the hearing has departed, the presiding officer shall not take the evidence of the late party.

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. 871-26.14(6). It also instructed the parties to be present at the IowaWORKS building at 2508 E 14th Street in Sioux City, Iowa 51101-2298 at 10:00 a.m. on May 24, 2023.

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 appellant was not present at the start of the hearing or during the grace period prior to the record being closed. The representative's decision remains in force and effect.

**DECISION:**

The April 4, 2023, (reference 04) unemployment insurance decision granting benefits, provided the claimant meets all other eligibility criteria,<sup>2</sup> remains in effect as the appellant is in default and the appeal is dismissed.



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Sean M. Nelson  
Administrative Law Judge II  
Iowa Department of Inspections & Appeals  
Administrative Hearings Division – UI Appeals Bureau

May 31, 2023  
Decision Dated and Mailed

smn/mh

**NOTE TO EMPLOYER:** To become a SIDES E-Response participant, you may send an email to [iwd-sidesinfo@iwd.iowa.gov](mailto:iwd-sidesinfo@iwd.iowa.gov). To learn more about SIDES, visit, <http://info.uisides.org>.

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<sup>2</sup> A question was raised regarding eligibility by Mr. Beckwith regarding how the claimant would know about his eligibility overall. The Benefits Bureau sends summary decisions in the event there are decisions standing for eligibility and ineligibility in the same time period. These questions are best directed by the Benefits Bureau because the administrative law judge's scope of authority is limited to that which is on appeal or waived notice to by both parties.

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

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.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

- 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. 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.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: [eab.iowa.gov](http://eab.iowa.gov)**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.