

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**FERRELL A BURSEY**  
Claimant

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**APPEAL 19A-UI-05895-JC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/28/19**  
**Claimant: Appellant (6)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.6(2) – Timeliness of Appeal  
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 claimant/appellant, Ferrell A. Bursey, filed an appeal from the July 12, 2019 (reference 05) unemployment insurance decision that denied benefits because he failed to make an adequate work search for the week ending June 29, 2019. After proper notice, a telephone hearing was scheduled for 1:05 p.m. on August 15, 2019. The claimant participated briefly during the hearing but disconnected the call and was unavailable when called back. No hearing was conducted.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant/appellant was properly notified of the scheduled hearing for this appeal. The claimant registered a phone number for the hearing but was initially unavailable when the administrative law judge called to begin the hearing. The claimant then called back and participated in the hearing for approximately seven minutes before suddenly disconnecting. It was unclear if the disconnection was initiated by the claimant or an accident. The administrative law judge made two attempts to contact the claimant and left two voicemail. He was directed to contact the Appeals Bureau immediately if he wanted to participate in the hearing. The hearing record was held open for a grace period to allow him to respond. No hearing was completed.

The back page of the hearing notice provided the following warning:

**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 ineligible for unemployment insurance benefits because he failed to make an adequate work search for the week ending June 29, 2019.

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

The Iowa Administrative Procedure 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.**

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 provided in Iowa Code § 17A.12(3). The record may be reopened if the absent party makes a request to reopen the hearing in writing 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.** (Emphasis added.)

The Iowa Supreme Court has opined that a default should not be set aside for ordinary negligence or want of ordinary care. Defaults should not be set aside where the movant ignores plain instruction with ample opportunity to comply. See *Houlihan v. Emp't Appeal Bd.*, 545 N.W.2d 863 (Iowa 1996). Here, the clear directive is to read the hearing notice and register a telephone number where the party can be reached for the hearing. The second part of that directive is to be available at the number provided at the date and time of the hearing. Further, if the party misses or does not receive the hearing call, he or she may call the telephone numbers on the hearing notice. Due process requires notice and an opportunity to be heard, both of which were provided to each party. *The rule does not provide exceptions for good*

*intentions and/or a party contacting the Appeals Bureau within a 'reasonable' or certain amount of time after the hearing is scheduled.*

The claimant/appellant, Ferrell A. Burse, appealed the unemployment insurance decision but failed to be available to participate in the scheduled hearing. The claimant/appellant has therefore defaulted on his appeal pursuant to Iowa Code § 17A.12(3) and Iowa Admin. Code r. 871-24.14(7), and the decision remains in force and effect.

If the appellant disagrees with this decision, a written request to reopen the record must be made to the administrative law judge within 15 days after the mailing date of this decision. The 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 the scheduled time.

**DECISION:**

The claimant/appellant is in default and the appeal is dismissed. The unemployment insurance decision dated July 12, 2019, (reference 05) denying benefits remains in effect.

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Jennifer L. Beckman  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
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Decision Dated and Mailed

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