

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BRET J SWAIM**  
Claimant

**SEDONA STAFFING INC.**  
Claimant

**APPEAL 22A-UI-05972-DZ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/29/20**  
**Claimant: Appellant (6)**

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Iowa Code §96.6(2) – Timely Appeal  
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages  
Iowa Code § 96.19(38) – Total and Partial Unemployment  
Iowa Code § 96.4(3) – Able to and Available for Work  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment  
Iowa Code § 17A.12(3) – Default Decision  
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

**STATEMENT OF THE CASE:**

Bret J Swain, the claimant/appellant, filed an appeal from the March 17, 2021 (reference 02) unemployment insurance (UI) decision that denied benefits as of March 29, 2020 because Mr. Swain was still employed with the employer for the same hours and wages as in his original contract of hire. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for April 18, 2022. Mr. Swain did not call the toll-free number listed on hearing notice at the time the hearing was scheduled to begin. The employer was present and ready to proceed at the time the hearing was scheduled to begin. Because Mr. Swain filed the appeal but did not call in, no hearing was held.

**ISSUE:**

Should Mr. Swain's appeal be dismissed based on him not appearing and participating?

**FINDINGS OF FACT:**

The parties were properly notified of the scheduled hearing for this appeal. Mr. Swain did not call the toll-free number listed on the hearing notice at the time scheduled for this appeal hearing. He did not request a postponement of the hearing before the hearing date. He did not call in before the record was closed, 15 minutes after the hearing was scheduled to begin. No hearing was held.

The hearing notice lists the hearing date of April 18, 2022, and the hearing time as 1:00 p.m. Iowa time. The hearing notice also advises parties:

**IMPORTANT NOTICE!**

**YOU MUST CALL** the toll-free number **866-783-7021** at the time of the hearing. When instructed enter the PIN Number . . . followed by the pound key [#] and wait for the administrative law judge to begin the hearing.

The administrative law judge **WILL NOT** call you for the hearing, you **MUST** call into the number provided above to participate. **Failure to participate in the hearing may result in dismissal of your appeal.**

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

You must call the toll-free number on the front of this notice at the time of the hearing to participate.

**Failure to Participate or Register for Appeal Hearing**

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 will not call you to participate in the hearing. Instructions for participating are on the other side of this page. 871 IAC 26.14(7)

The record was left open for a grace period of 15 minutes after the hearing start time to give Mr. Swain 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. Holding Mr. Swain in default for not appearing and participating during a 15-minute window after the hearing start time is reasonable considering the time allocated for each unemployment hearing. Allowing this additional time period is more than reasonable under the circumstances.

The unemployment insurance decision had concluded that Mr. Swain was not eligible for UI benefits as of March 29, 2020.

**REASONING AND CONCLUSIONS OF LAW:**

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) provide:

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 judgment. 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.

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. Mr. Swain was not present at the start of the hearing. As a *courtesy*, Mr. Swain was granted additional time not required by statute or rule. The representative's decision remains in force and effect.

**DECISION:**

The March 17, 2021, (reference 02) unemployment insurance decision denying benefits as of March 29, 2020 remains in effect as Mr. Swain is in default and the appeal is DISMISSED.



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Daniel Zeno  
Administrative Law Judge  
Iowa Workforce Development  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

April 25, 2022  
Decision Dated and Mailed

dz/mh

**NOTE TO MR. SWAIN:**

- If you were unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA) benefits. **You must apply for PUA benefits to determine your eligibility under the program.** To apply for PUA benefits,
  - First go to <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-appeals>
  - Go to the "WHAT TO EXPECT FROM THE HEARING" section.
  - Go to the last two sentences in that section.
  - The PUA application link is at the end of the second-to-last sentence of the section.
  - The reference number/authorization number is the pin number you would have used for the appeal hearing: 105972.
- **If IWD finds you eligible for federal PUA benefits, you can use the PUA benefits to pay off the REGULAR (state) UI overpayment.**
- **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you've received so far.**
- Governor Reynolds ended Iowa's participation in federal pandemic-related unemployment benefit programs, including the PUA program, effective June 12, 2021. **But you can still apply for PUA benefits at the link above if you were unemployed for reasons related to COVID-19 between February 2, 2020, and June 12, 2021.**