

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

ROBERT W MASON
Claimant

AGRI-INDUSTRIAL PLASTICS CO
Employer

APPEAL NO. 22A-UI-17831-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/18/22
Claimant: Appellant (6R)**

Iowa Code Section 96.5(1)(d) – Voluntary Quit Due to Non-Work Related Medical Condition
Iowa Code Section 96.6 – Aggrieved Party Requirement
Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default
Iowa Administrative Code Rule 871-26.8(1) – Dismissal of Appeal, No Aggrieved Party

STATEMENT OF THE CASE:

The claimant and the employer each filed an appeal in this matter. On October 10, 2022, the *employer* filed a timely appeal from the October 5, 2022 (reference 01) decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion the claimant left the employment on August 23, 2022 due to a non-work related illness or injury and the quit was without good cause attributable to the employer. On October 11, 2022, Robert Mason (claimant) filed a timely appeal from the same decision. The Appeals Bureau only docketed an October 10, 2022 appeal and labeled it as a *claimant* appeal. The Appeals Bureau did not docket an October 11, 2022 appeal. A hearing was set for November 1, 2022 and the due notice was issued to the parties. McKenzie Christy appeared on behalf of the employer. Robert Mason (claimant) did not appear.

Upon review of the employer appeal, and under the mistaken belief that only the employer had filed an appeal, the administrative law judge determined the matter should be dismissed.

After the administrative law judge dismissed the employer, the Appeals Bureau staff made the administrative law judge aware of the claimant's October 11, 2022 appeal. Based upon the claimant/appellant's failure to participate in the hearing and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

ISSUES:

Whether the claimant's appeal should be dismissed based on the claimant/appellant's failure to appear and participate.

Whether the *employer's* appeal from October 5, 2022 (reference 01) decision should be dismissed.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The October 5, 2022 (reference 01) decision disqualified the claimant for benefits and held the employer's account would not be charged for benefits, based on the deputy's conclusion the claimant left the employment on August 23, 2022 due to a non-work related illness or injury and the quit was without good cause attributable to the employer. The decision provided two avenues by which the claimant could requalify for benefits.

The October 5, 2022 (reference 01) decision was favorable to employer Agri-Industrial Plastics Company. In addition, that employer is not a base period employer for purposes of the claim that was effective September 18, 2022. That means this employer's account would not be charged under any circumstances if benefits were paid to the claimant in connection with the current benefit year. Rather, an earlier, base period employer's account might be charged if benefits were paid on the claim.

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The claimant is an appellant in this matter. The claimant was properly notified of the appeal hearing set for 8:00 a.m. on November 1, 2022. The claimant/appellant failed to call the toll-free number listed on the hearing notice at the time of the hearing. The claimant/appellant did not participate or request a postponement of the hearing as required by the hearing notice.

The hearing notice instruction advised the claimant of the date and time of hearing. It also stated:

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 the dismissal of your appeal.**

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

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)

After the administrative law judge dismissed the employer from the hearing, the administrative law judge remained available until 9:00 a.m. on November 1, 2022, but the claimant did call in for the hearing. As of November 7, 2022, the claimant has still not called in for the hearing. The administrative law judge confirmed that the Clear2There recording system would allow the claimant to call in and register a telephone number after the administrative law judge dismissed the employer from the hearing.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedure 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 Admin. Code r. 871-26.14(7) provides:

(7) 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 section 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.

The claimant/appellant did not call the toll-free number listed on the hearing notice at the time of the hearing. The appellant is in default. The appeal is be dismissed.

If the appellant disagrees with this decision, the appellant may appeal the decision pursuant to the instructions on the last page of this decision.

The administrative law judge will now address the employer appeal. The appeal rights and procedures set forth at Iowa Code section 96.6 presuppose and require the existence of an aggrieved party as the appellant. The claimant was aggrieved by the decision in question, but the employer was not. The employer has no right or standing to file an appeal on behalf of the claimant or to proceed with an appeal hearing on behalf of the claimant. The decision the employer appealed relieved the employer of liability and thereby granted all available remedy to the employer. There is no further remedy available to the employer in connection with the appeal.

Iowa Administrative Code rule 871-26.8(1) provides as follows: "An appeal may be dismissed upon the request of a party or in the agency's discretion when the issue or issues on appeal have been resolved in the appellant's favor."

Because the employer is not aggrieved by the decision the employer appealed, and because the employer has no right or standing to file an appeal or proceed with an appeal hearing on behalf of the claimant, the employer appeal in this matter will be dismissed. The October 5, 2022 (reference 01) decision remains in effect.

DECISION:

The claimant defaulted on his appeal. Accordingly, the claimant's appeal from the October 5, 2022 (reference 01) is DISMISSED. In addition, because the *employer* is not aggrieved by the October 5, 2022 (reference 01) decision, the employer's appeal is also DISMISSED. The decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion the claimant left the employment on August 23, 2022 due to a non-work related illness or injury and the quit was without good cause attributable to the employer, remains in effect.

REMAND:

This matter is REMANDED to the Iowa Workforce Development Benefits Bureau for determination of whether the claimant requalified for benefits pursuant to Iowa Code section 96.5(1)(d) and/or 96.5(1)(g) subsequent to the August 23, 2022 separation referenced in the October 5, 2022 (reference 01) decision.



James E. Timberland
Administrative Law Judge

November 10, 2022
Decision Dated and Mailed

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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
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: 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>.

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**

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 está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

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.