

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

OSVALDO VELEZ COLON

Claimant

WEST LIBERTY FOODS LLC

Employer

APPEAL 20A-UI-09307-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20

Claimant: Appellant (6)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(10) – Able & Available – Leave of Absence
Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

On August 3, 2020, Osvaldo Velez Colon (claimant/appellant) filed an appeal from the July 31, 2020, reference 01, unemployment insurance decision that concluded he was not eligible for unemployment insurance benefits. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for September 21 at 8:00 a.m. The record for that hearing closed on September 21 at 8:15 a.m. However, on September 23, before a final decision was issued, the Appeals Bureau received the claimant's September 14 request to reschedule the hearing after 4:30 p.m. because he works until then. The administrative law judge reopened the record and the hearing was rescheduled for October 13 at 5:00 p.m.

The claimant's phone number from his appeal letter was entered into the conference call system from his appeal letter. When the claimant answered, he stated he was unable to participate even though he had received the notice for the hearing. Bruno (employee number 12612) provided Spanish interpretation for the discussion. The claimant, the appellant, was not available to participate in the hearing and no hearing was held.

ISSUE:

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

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing for this appeal. The appellant was not available to participate at the time of the hearing because he was heading home from work. He received notice of the date and time of the hearing, but misread it and believed the hearing was being held on Friday. The hearing had already been postponed once at his request.

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

Rescheduling Appeal Hearing

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 or time and include any dates you are not available for a rescheduled hearing. 871 IAC 26.8

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

The unemployment insurance decision stated that the claimant was not eligible for unemployment insurance benefits.

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. 26.8(2) provides:

A hearing may be postponed by the presiding officer for good cause, either upon the presiding officer's own motion or upon the request of any party in interest. A party's request for postponement may be in writing or oral, provided the oral request is tape-recorded by the presiding officer, and is made not less than three days prior to the scheduled hearing. **A party shall not be granted more than one postponement except in the case of extreme emergency.** [Emphasis added.]

The 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 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 available at the start of the hearing to avoid a default judgement. 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.

If these instructions are not followed, the appealing 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 Iowa Supreme Court has held a default decision should be upheld when the absence of the appellant was 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 be upheld when the appellant has ignored clear requirements in the rules.

In this case, the appellant was not available for the hearing. He has provided two reasons for not being available, work and misreading the date of the hearing. The claimant's failure to properly note the correct day for the hearing is due to his own negligence, carelessness, or inattention. Typically, work is a good reason to postpone a hearing; however, the claimant had already been granted one postponement and leaving work is not an extreme emergency. The appeal is dismissed.

Pursuant to the rule, the appellant may make a written request to the administrative law judge that the hearing be reopened, but must do so within 15 days after the mailing date of this decision. The written 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 its scheduled time. The appellant also has the option to appeal the decision directly to the Employment Appeal Board, whose address is listed at the top right caption.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The July 31, 2020, reference 01, unemployment insurance decision denying benefits remains in effect as the appellant is in default and the appeal is dismissed.

Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that, in general, provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount in FPUC. This decision does not address whether the claimant is eligible for PUA. For a decision on such eligibility, the claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.



Stephanie R. Callahan
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

October 15, 2020
Decision Dated and Mailed

src/scn

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.