IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

KYLIE PEDROSO Claimant **BLACK HAWK NURSING AND REHABILITA** Employer	**APPEAL NO. 20A-UI-05250-JE-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 03/15/20** **Claimant: Appellant (6)**

Iowa Code § 96.5-2-a – Discharge Misconduct
Iowa Code § 96.6-2 – Timeliness of Appeal
Iowa Code § 17A.12(3) - Default Decision
871 IAC 26.14(7) - Dismissal of Appeal on Default

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from a representative's unemployment insurance decision dated May 22, 2020, (reference 06), that concluded she was not eligible for unemployment insurance benefits after a separation from employment with Black Hawk Nursing and Rehabilitation. Notices of hearing were mailed to the parties' last-known addresses of record for a telephone hearing to be held at 3:00 p.m. on June 30, 2020. A review of the Appeals Bureau's conference call system indicates that the claimant/appellant failed to respond to the hearing notice instructing her to provide a telephone number at which she could be reached for the hearing and consequently no hearing was held in this matter.

ISSUE:

The issues are whether the underlying decision should be affirmed and the appeal should be effectively dismissed based upon the claimant/appellant's failure to participate in the hearing and whether the claimant is overpaid benefits.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. A Notice of Appeal and Hearing was mailed to both parties on June 10, 2020. There is no evidence suggesting the claimant/appellant did not receive the hearing notice prior to the hearing scheduled on June 30, 2020.

The front page of the hearing notice states: "**IMPORTANT NOTICE! YOU MUST PROVIDE YOUR PHONE NUMBER TO THE APPEALS BUREAU AS SOON AS POSSIBLE.** If you do not follow these instructions, the judge will not call you for the hearing. You must also provide the name(s) and phone number(s) of any witnesses to the Appeals Bureau."

The claimant/appellant failed to provide a telephone number at which she could be reached for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The representative's decision concluded that the claimant was not eligible for unemployment insurance benefits.

Despite being denied benefits at the initial fact-finding, the decision was made by Iowa Workforce Development to release funds of the claimants while their appeals were pending due to the backlog in appeals caused by the recent COVID 19 outbreak. The claimant was one of the individuals whose funds were released pending appeal. The administrative record shows the claimant filed for and received a total of $2,223.00 in unemployment insurance benefits for the nine weeks ending May 16, 2020. The claimant has also received Federal Pandemic Unemployment Compensation in the amount of $4,200.00 for the seven weeks ending May 19, 2020.

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. Likewise, Agency rule 871 IAC 26.14(7) provides that if the appealing 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 judge may decide the appealing party is in default and dismiss the appeal as provided in Iowa Code § 17A.12(3).

This rule does not provide exceptions for good intentions and/or a party contacting the Appeals Bureau within a reasonable amount of time after the hearing is scheduled. It can be assumed an appellant intends to participate in the hearing simply by the fact an appeal is filed, but their responsibility does not end there. All parties are required to follow the specific written instructions printed on the hearing notice. Due process requires notice and an opportunity to be heard, both of which were provided to the parties.

If the claimant/appellant responds to the notice of hearing after the record has been closed, the administrative law judge shall not take the evidence of the late party. Instead, the administrative law judge shall inquire ex parte as to why the party was late in responding to the notice of hearing. For good cause shown, the record shall be reopened and cause further notice of hearing to be issued. The record shall not be reopened without a finding of good cause for the party's late response to the notice of hearing. 871 IAC 26.14(7)b. Furthermore, the rule states that failure to read or follow the hearing notice instructions shall not constitute good cause. 871 IAC 26.14(7)c.

The claimant/appellant appealed the unemployment insurance decision but failed to participate in the scheduled appeal hearing. The claimant/appellant has therefore defaulted on her appeal pursuant to Iowa Code § 17A.12(3) and 871 IAC 26.14(7), and the representative's decision remains in force and effect.

As the claimant/appellant has been receiving benefits, pending a determination on her appeal, the next issue in this case is whether the claimant/appellant was overpaid unemployment insurance benefits.

Iowa Code section 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

Since the decision disqualifying the claimant has been affirmed, the claimant was overpaid $2,223.00 in unemployment insurance benefits for the seven weeks ending May 19, 2020. She is also overpaid benefits in the amount of $4,200.00 for the seven weeks ending May 19, 2020.

The final issue is whether the claimant is overpaid Federal Pandemic Unemployment Compensation. The administrative law judge finds that she is overpaid those benefits.

PL116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.—Any agreement under this section shall provide that the State agency of the state will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) The amount determined under the State law (before the application of this paragraph), plus

(B) An additional amount of $600.00 (in this section referred to as "Federal Pandemic Unemployment Compensation").

….

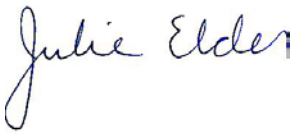
(f) Fraud and Overpayments

(2) Repayment.—In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency…

Here, the claimant is disqualified from receiving regular unemployment insurance benefits. Accordingly, this also disqualifies the claimant from receiving Federal Pandemic Unemployment Compensation. In addition to the regular unemployment insurance benefits the claimant received, she also received an additional $4,200 in Federal Pandemic Unemployment Compensation benefits for the three weeks ending May 8, 2020. The claimant may be required to repay those benefits as well.

DECISION:

The representative's unemployment insurance decision dated May 22, 2020, (reference 06), is affirmed. The decision denying benefits to the claimant/appellant remains in effect as the claimant/appellant is in default and the appeal is dismissed. The claimant/appellant is overpaid benefits in the amount of $2,233.00 for the nine weeks ending May 16, 2020. which must be repaid. She has also received $4,200.00 in Federal Pandemic Unemployment Compensation which may have to be repaid.



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

July 13, 2020
Decision Dated and Mailed

je/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 due to disqualifying separations, 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.