

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KYAW A KHAING

Claimant

APPEAL NO: 20A-UI-07377-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 04/19/20

Claimant: Appellant (6)

Iowa Code § 96.4(3) – Able and Available
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, Kyaw Khaing, filed a timely appeal from the June 25, 2020, reference 01, decision that denied benefits for the period beginning April 19, 2020, based on the deputy's conclusion that Mr. Khaing requested and was approved for a leave of absence, was voluntarily unemployed, and was not available for work. A notice of hearing was mailed to the parties' last-known addresses of record for a telephone hearing to be held at 11:00 a.m. on August 7, 2020. A review of the Appeals Bureau's conference call system indicates that the claimant/appellant, Kyaw Khaing, did not respond to the hearing notice instructions to register a telephone number at which he could be reached for the hearing. The employer also did not provide a telephone number for the hearing. 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.

ISSUE:

Should the appeal be dismissed based upon the claimant/appellant not participating in the hearing?

FINDINGS OF FACT:

The claimant, Kyaw Khaing, is the appellant in this matter. The claimant was properly notified of the appeal hearing set for 11:00 a.m. on August 7, 2020 through the hearing notice that was mailed to his last-known address of record on July 23, 2020. The claimant did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. The claimant did not comply with the hearing notice instructions to register a telephone number at which he could be reached for the hearing. The claimant did not provide a telephone number in his appeal. The claimant has not provided the Appeals Bureau with a telephone number since filing the appeal.

The June 25, 2020, reference 01, decision denied benefits for the period beginning April 19, 2020, based on the deputy's conclusion that Mr. Khaing requested and was approved for a leave of absence, was voluntarily unemployed, and was not available for work.

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.

Iowa Administrative Code rule 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 provide 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.

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.

The claimant/appellant appealed the representative's decision but failed to participate in the 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 representative's decision remains in force and effect.

DECISION:

The claimant defaulted on his appeal. The appeal is dismissed. The June 25, 2020, reference 01, decision that denied benefits for the period beginning April 19, 2020, based on the

deputy's conclusion that the claimant requested and was approved for a leave of absence, was voluntarily unemployed, and was not available for work, shall stand.

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. *If this decision becomes final or if you are not eligible for Pandemic Unemployment Assistance (PUA), you will have an overpayment of benefits that you will be required to repay.* 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>.



James E. Timberland
Administrative Law Judge

August 14, 2020
Decision Dated and Mailed

jet/sam