

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**MICHAEL J WARD**  
Claimant

**WALMART INC**  
Employer

**APPEAL 22A-UI-08894-DH-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/06/22**  
**Claimant: Appellant (6)**

Iowa Code § 96.5(2)a - Discharge for Misconduct  
Iowa Code § 96.5(1) - Voluntary Quitting  
Iowa Code § 17A.12(3) - Default Decision  
Iowa Admin. Code r. 871-26.14(7) - Dismissal of Appeal on Default

**STATEMENT OF THE CASE:**

Claimant/appellant, filed an appeal from the April 6, 2022, (reference 01), unemployment insurance decision that concluded he was not eligible for unemployment insurance benefits due to a 04/06/22 discharge from work for violation of a known company rule. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for May 20, 2022, at 11:00 a.m. The employer did not participate. The Appeals Bureau's conference call system indicates that the claimant/appellant, Michael Ward, as well as his party representative, Matt Henderson, failed to call into the hearing at the time of the hearing and did not participate. Because the appellant failed to follow the instructions on the notice of hearing, no hearing was held. Judicial notice was taken of the administrative record.

**ISSUE:**

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

**FINDINGS OF FACT:**

The parties were properly notified of the scheduled hearing for this appeal. The appellant failed to call the toll-free number listed on the hearing notice at the time of the hearing. The appellant did not participate or request a postponement of the hearing as required by the hearing notice. Official notice of the Clear2there hearing control screen is taken to establish that appellant did not call at the time of the hearing.

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

### **IMPORTANT NOTICE!**

**YOU MUST CALL** the toll-free number: **866-783-7021** at the time of the hearing. When instructed, enter the PIN Number **108894** 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 hearing instructions stating, "You must call the toll-free number on the front of this notice at the time of the hearing to participate." This information also appears on the hearing notice in Spanish.

As a courtesy to the appellant the record was left open for a minimum of 15 minutes after the hearing start time to give the appellant a reasonable opportunity to participate. Holding the appellant in default for failure to appear and participate during a 15-minute window after the hearing start time is reasonable considering the time allocated for unemployment hearings.

The representative's decision remains in effect.

### **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, in pertinent part:

(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 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 present 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 read the hearing notice; call the toll-free number at the time of the hearing and wait for the judge; the judge will not call you; and failure to participate may result in the dismissal of your appeal.

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

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 should be dismissed. If appellant disagrees with this decision, the appellant may appeal the decision directly to the Employment Appeal Board, whose address is listed at the top right caption.

**DECISION:**

The April 6, 2022, (reference 01) unemployment insurance decision denying unemployment insurance benefits remains in effect as the appellant is in default and the appeal is **DISMISSED**.



Darrin T. Hamilton  
Administrative Law Judge

June 3, 2022  
Decision Dated and Mailed

dh/kmj