

IOWA DEPARTMENT OF INSPECTIONS AND
APPEALS
Division of Administrative Hearings
Wallace State Office Building
Des Moines, Iowa 50319

DECISION OF THE ADMINISTRATIVE LAW JUDGE

KAREY DYER
1106 VIRGINIA AVE
DES MOINES, IA 50315

IOWA WORKFORCE DEVELOPMENT
MICHELLE SADDORIS, INVESTIGATOR

NICHOLAS OLIVENCIA, IWD
JONI BENSON, IWD

Appeal Number: 15IWDUI146
OC: 04/13/14
Claimant: Appellant (6)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed Notice of Appeal, directly to the ***Employment Appeal Board, 4TH Floor Lucas Building, Des Moines, Iowa 50319.***

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to the department. 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

April 30, 2015

(Decision Dated & Mailed)

871 Iowa Administrative Code 26.14(7) – Default Dismissal

STATEMENT OF THE CASE

Claimant/Appellant Karey Dyer appealed a decision from Respondent Iowa Workforce Development (“IWD”) dated April 8, 2015, reference 04, finding Dyer was overpaid \$459 in unemployment insurance benefits for failing to report and/or incorrectly reporting wages from Vatterott.

IWD transferred the matter to the Division of Administrative Hearings on April 16, 2015, to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on April 17, 2015, scheduling a contested case hearing for April 30, 2015. Prior to the hearing IWD representative Michelle Saddoris sent copies of IWD’s exhibits to Dyer and to the administrative law judge.

At the time of the hearing Dyer did not appear. The Notice of Telephone Hearing notified Dyer it was Dyer's responsibility to call in for the hearing, the judge would not call Dyer, and if Dyer failed to call in Dyer would not be able to participate in the hearing. Saddoris followed the directions on the Notice of Telephone Hearing and appeared for the hearing on April 30, 2015. I waited five minutes before releasing Saddoris from the hearing. Dyer did not appear.

ISSUE

Whether Dyer's appeal should be dismissed based on Dyer's failure to participate in the hearing.

FINDINGS OF FACT

IWD issued a decision dated April 8, 2015, reference 04, finding Dyer was overpaid \$459 in unemployment insurance benefits for failing to report and/or incorrectly reporting wages from Vatterott

A Notice of Telephone Hearing was mailed to all parties on April 16, 2015, scheduling a contested case hearing for April 30, 2015. Dyer did not appear as directed by the Notice of Telephone Hearing. Dyer's copy of the Notice of Telephone Hearing was not returned as undeliverable mail.

The Notice of Telephone Hearing notified Dyer the administrative law judge would wait five minutes after the time the hearing was scheduled to start to allow the parties to call in. The Notice of Telephone Hearing further notified Dyer it was Dyer's responsibility to call in for the hearing, the judge would not call Dyer, and if Dyer failed to call in Dyer would not be able to participate in the hearing. Saddoris followed the directions on the Notice of Telephone Hearing and appeared for the hearing on April 30, 2015. I waited five minutes before releasing Saddoris from the hearing. Dyer did not appear.

REASONING AND CONCLUSIONS OF LAW

The Iowa Administrative Procedure Act grants a presiding officer authority to enter a default decision against a party when a party fails to appear or participate in a contested case proceeding after receiving proper notice.¹ Under IWD's rules, if an appealing party fails to attend the hearing, the presiding officer may find the party is in default and dismiss the appeal.² Dyer did not appear for the hearing on April 30, 2015 as directed by the Notice of Telephone Hearing. I waited five minutes before releasing IWD's representative. By failing to participate in the hearing Dyer is in default. Dyer's appeal is dismissed.

If Dyer disagrees with this decision, Dyer may request to have the hearing reopened if there is good cause for missing the hearing by filing a written Motion to Vacate within 15

¹ Iowa Code § 17A.12(3).

² 871 IAC 26.14(7).

days after the mailing date of the decision and in the absence of an appeal to the Employment Appeal Board.³ The written request must explain the emergency or other good cause that prevented Dyer from participating in the hearing at the scheduled time. If Dyer establishes good cause, the record will be reopened.⁴ “Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.”⁵

DECISION

Dyer’s appeal is dismissed. IWD’s decision dated April 8, 2015, reference 04, is **AFFIRMED**. IWD shall take any action necessary to implement this decision.

hlp

³ *Id.* 26.14(7), 26.8(3).

⁴ *Id.* 26.14(7)*b.*

⁵ *Id.* 26.14(7)*c.*