

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**LEA N. KIPENDO
1436 GUTHRIE AVENUE
DES MOINES, IA 50316**

**ACRO SERVICE CORP.
C/O TALX UCM SERVICES, INC.
PO BOX 283
SAINT LOUIS, MO 63166**

**DIA APPEAL NO. 21IWDUI2035
IWD APPEAL NO. 21A-UI-02858
ADMINISTRATIVE LAW JUDGE
DECISION**

REQUEST TO REOPEN AND APPEAL RIGHTS:

This Decision Shall Become Final, unless within fifteen (15) days from the mailing date below the administrative law judge's signature on the last page of the decision, you or any interested party:

(1) Make a written request to reopen the hearing to the Appeals Bureau directly to:

**Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
or
Fax (515)478-3528**

(2) **OR YOU MAY** Appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
or
Fax (515)281-7191**

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.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.
That an appeal from such decision is being made and such appeal is signed.

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 Workforce Development. 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.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

ONLINE RESOURCES:

UI law and administrative rules: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-law-and-administrative-rules>

UI Benefits Handbook: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-benefits-handbook-guide-unemployment-insurance-benefits>

Handbook for Employers and forms: <https://www.iowaworkforcedevelopment.gov/employerforms>

Employer account access and information: <https://www.myiowawai.org/UITIPTaxWeb/>

National Career Readiness Certificate and Skilled Iowa Initiative: <http://skillediowa.org/>

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LEA N. KIPENDO
Claimant,

v.

ACRO SERVICE CORP.
Employer.

**DIA APPEAL NO. 21IWDUI2035
IWD APPEAL NO. 21A-UI-02858**

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/14/20
Claimant: Appellant (6)**

STATEMENT OF THE CASE:

The Employer, ACRO Service Corp, filed an appeal from the December 30, 2020 (reference 02) unemployment insurance decision that concluded Appellant Lea Kipendo was eligible for unemployment insurance benefits. Notice of hearing was mailed to the parties on March 15, 2021, scheduling hearing for March 31, 2021 at 2 p.m. The parties were instructed to call a toll-free conference number at the assigned time. Because both the Employer and the Claimant failed to follow the instructions on the notice of hearing, and were not available by calling in on the date and time scheduled for this appeal hearing, no hearing was held.

ISSUE:

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

FINDINGS OF FACT:

The Employer and the Claimant were both properly notified of the scheduled hearing for this appeal. Neither party called into the conference call at the time scheduled for this appeal hearing as required by the hearing notice. Neither party requested a postponement of the hearing. No hearing was held.

The hearing notice instruction specifically advises parties:

DATE: March 31, 2021
TIME: 2:00 p.m. Central Time
ALJ: Emily Kimes-Schwiesow (Email:emily.kimes-schwiesow@dia.iowa.gov)
TOLL-FREE HEARING PHONE NUMBER: 1-866-822-2492

At the date and time of the hearing, **ALL PARTIES MUST CALL** the toll-free hearing number listed above. Important additional instructions for participating in this hearing are on the next page of this Notice. Failure to appear and participate in the hearing may result in the entry of a default judgment.

The back page of the hearing notice provides further instruction and warning:

It is your responsibility to call in for the hearing. The judge will not call you. If you do not call using the above instructions, you will not be able to participate in the hearing. If you have technical difficulties connecting at the time of hearing, please call (515) 281-6468.

The record was left open for a grace period of 15 minutes after the hearing start time to give the parties 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 each unemployment hearing. Allowing this additional time period is more than reasonable under the circumstances. The unemployment insurance decision had concluded that the Claimant was eligible for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedure 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.**

Agency rules at Iowa Admin. Code r. 26.14(7)(c) 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 provided in Iowa Code § 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.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record. (Emphasis added.)

The Iowa Supreme Court has opined that a default should not be set aside for ordinary negligence or want of ordinary care. Defaults should not be set aside where the movant ignores plain instruction with ample opportunity to comply. See *Houlihan v. Emp't Appeal Bd.*, 545 N.W.2d 863 (Iowa 1996).

Here the clear directive is to read the hearing notice and call in to the toll-free conference line at the set date and time. Further, if the party has issues connecting to the conference line, he or she may call the telephone number on the hearing notice. Due process requires notice and an opportunity to be heard, both of which were provided to each party. *The rule does not provide exceptions for good intentions and/or a party contacting the Department of Inspections and Appeals within a 'reasonable' or certain amount of time after the hearing is scheduled.* It is assumed an appellant intends to participate in the hearing simply by the fact that an appeal is filed, but the appellant's responsibility does not end there. Each party is required to follow the

prominent specific written instructions printed on the hearing notice. The appellant Employer filed the appeal and is held solely responsible for going forward with the case in a prompt and deliberate manner. The rule holds an appellant in default if not present *at the start* of hearing. As a courtesy, appellant was granted an additional 15-minute grace period not required by statute or rule.

Here, notwithstanding notice, opportunity and additional time, both the Employer and the Claimant failed to participate in the case at the appointed date and time without providing a good-cause reason for the delay or failure to do so. Accordingly, the appellant is in default and the appeal shall be dismissed. Iowa Code § 17A.12(3) and Iowa Admin. Code r. 26.14(7). The unemployment insurance decision remains in force and effect. If the appellant does not intend to pursue this appeal, the appellant need not take any action. If the appellant intends to pursue this appeal, the appellant must make a written request to the administrative law judge that the hearing be reopened 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.

DECISION:

The December 30, 2020 (reference 02) unemployment insurance decision concluding that Claimant Lea Kipendo was eligible for unemployment compensation benefits remains in effect as the appellant is in default and the appeal is dismissed.



Emily Kimes-Schwiesow
Administrative Law Judge
Department of Inspections and Appeals
Administrative Hearings Division

April 5, 2021

Decision Dated and Mailed

EKS/AA

CC: Lea Kipendo (by First Class Mail)
ACRO Service Corp, Employer (by First Class Mail)
Nicole Merrill (email)
Joni Benson (email)