

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TEQUESHA BROWN
Claimant

GENESIS HEALTH SYSTEM
Employer

APPEAL 21A-UI-15342-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/18/2021
Claimant: Appellant (6)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
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/appellant, Tequesha Brown, filed an appeal from the July 2, 2021, (reference 01) unemployment insurance decision that concluded she was not eligible for unemployment insurance benefits. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for September 9, 2021. A review of the Appeals Bureau's conference call system indicates that the appellant was not available at the telephone number provided for the scheduled hearing. The employer followed the instructions on the hearing notice. The employer's representative was present and prepared to proceed with the hearing as scheduled. Because the claimant/appellant failed to follow the instructions on the notice of 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 parties were properly notified of the scheduled hearing for this appeal. The hearing was originally scheduled for August 30, 2021, but was rescheduled based on claimant's request during the originally scheduled hearing date and time. The parties agreed on the new hearing date and time on the record, and received new hearing notices. The appellant was not available at the telephone number provided for the scheduled hearing and 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 answer when called at the number provided at registration. The appellant did not call in before the record was closed, 15 minutes after the hearing was scheduled to begin.

The hearing notice instruction specifically advises parties in English and Spanish:

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.

The hearing notice lists the hearing date of September 9, 2021 and the hearing time as 1:00 p.m. Iowa time. The back page of the hearing notice provides further warning in both languages:

If you do not participate in the hearing, the judge may dismiss the appeal or issue a decision without considering your evidence.

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. This reasonable amount of time is appropriate because if a hearing were conducted with the non-appealing party alone it would have likely concluded in 15 minutes or less. Allowing additional time would prejudice the non-appealing party for appearing in a timely manner.

The 15 minute wait time is also a reasonable period to hold the record open as insufficient time would remain to conduct a quality due process hearing in the time allotted by the Appeals Bureau. Each two-party hearing is allowed 60 minutes. Holding the appellant in default for failure to appear and participate during a 15 minute window after the hearing start time is entirely reasonable considering the time allocated for unemployment hearings.

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

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.

The Agency rules at Iowa Admin. Code r. 871—26.14(7) provide:

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. 871—26.14(7). The hearing notice instructs the parties to:

1. Read the hearing notice.
2. Register a telephone number where the party can be reached for the hearing.
3. Be available at that number at the date and time of the hearing.

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

Pursuant to the rule, the appellant may make a written request to the administrative law judge that the hearing be reopened, but must do so 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. The appellant also has the option to appeal the decision directly to the Employment Appeal Board, whose address is listed at the top right caption.

DECISION:

The July 2, 2021, (reference 01) unemployment insurance decision denying benefits remains in effect as the appellant is in default and the appeal is dismissed.



Alexis D. Rowe
Administrative Law Judge

September 13, 2021
Decision Dated and Mailed

ar/mn