

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEPHEN E RAVER

Claimant

ANKENY COMMUNITY SCHOOL DIST

Employer

APPEAL 20A-UI-05248-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20

Claimant: Appellant (6R)

Iowa Code § 96.19(38) – Total, Partial, Temporary Unemployment
Iowa Admin. Code r. 871-24.23(26) – Same hours and same wages
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL 116-136 Section 2104(B) – Federal Pandemic Unemployment Compensation
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, Stephen E. Raver, filed an appeal from the June 2, 2020 (reference 01) unemployment insurance decision that concluded he was not eligible for unemployment insurance benefits due to working the same hours and same wages as in his original contract of hire. A notice of hearing was mailed to each of the parties' last known addresses of record for a telephone hearing scheduled for June 23, 2020. A review of the Appeals Bureau's conference call system indicates that the appellant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the scheduled hearing. Because the claimant/appellant failed to follow the instructions on the notice of hearing, no hearing was held. Official notice was taken of the administrative record as it relates to benefits claimant has been paid to date.

ISSUES:

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

Is the claimant overpaid benefits?

Is the claimant overpaid Federal Pandemic Unemployment Compensation benefits?

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing for this appeal. The appellant failed to provide a telephone number at which he could be reached for the scheduled hearing as required by the hearing notice. She did not request a postponement of the hearing before the hearing date. Official notice of the Clear2there hearing control screen is taken to establish that appellant did not call or register online with the Appeals Bureau to provide a telephone number and/or name of a representative before the date and time the hearing was scheduled. 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 TUE JUN 23, 2020 and the hearing time as 10:00 a.m. Iowa time. The back page of the hearing notice provides further warning in both languages:

You must register a phone number for each hearing by following the instructions on the front of this notice.

...

If you do not participate in the hearing, the judge may dismiss the appeal or issue a decision without considering your evidence. The Appeals Bureau does not have a phone number for this hearing unless you provide it to use by following the instructions on the other side of this page. If you do not follow those instructions, the judge will not call you for the hearing.

The record was left open for a grace period 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 and a one-party hearing allowed 30 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 June 2, 2020 (reference 01) unemployment insurance decision had concluded that the claimant was not eligible for unemployment insurance benefits effective March 29, 2020. Despite being denied benefits in the original decision, the claimant received benefits prior to the initial decision being entered. The administrative record shows claimant filed for and has been paid a total of the following unemployment insurance benefits:

\$199.00 for the week of March 15, 2020 through March 21, 2020;
\$199.00 for the week of March 22, 2020 through March 28, 2020;
\$111.00 for the week of March 29, 2020 through April 4, 2020;
\$42.00 for the week of April 5, 2020 through April 11, 2020;
\$0.00 for the weeks of April 12 through May 9, 2020.

Claimant's administrative records establish that he has received Federal Pandemic Unemployment Compensation benefits of \$600.00 for the week-ending April 4, 2020 and \$600.00 for the week-ending April 11, 2020 for a total of \$1,200.00.

The issue of whether the claimant was able to and available for work and working the same hours and same wages with this employer from March 15, 2020 through March 28, 2020 is remanded to the benefits bureau for an initial investigation and determination, as well as whether the claimant is overpaid benefits from March 15, 2020 through March 28, 2020.

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. 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. 26.14(7). There 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. As the claimant has received benefits, the next issue in this case is whether the claimant has been overpaid unemployment insurance benefits.

Iowa Code § 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

- a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

The underlying decision which was affirmed had denied benefits effective March 29, 2020. From March 29, 2020 through present date, the claimant has received \$153.00 in regular unemployment insurance benefits and \$1,200.00 in Federal Pandemic Unemployment Compensation.

The administrative law judge concludes that the claimant has been overpaid regular unemployment insurance benefits of \$153.00 for the weeks between March 29, 2020 and April 11, 2020 pursuant to Iowa Code § 96.3(7) as the disqualification decision that created the overpayment decision is affirmed. Claimant must repay those benefits to the agency.

The next issue is whether the claimant was eligible for Federal Pandemic Unemployment Compensation ("FPUC") benefits and whether he was overpaid those benefits. The administrative law judge finds that he was not eligible for those benefits and is overpaid FPUC benefits.

PL116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

- (1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

- (A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as “Federal Pandemic Unemployment Compensation”).

....

(f) Fraud and Overpayments

(2) Repayment.-- In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

Because claimant is disqualified from receiving regular unemployment insurance benefits, he is also disqualified from receiving FPUC. The administrative law judge concludes that claimant has been overpaid FPUC in the gross amount of \$1,200.00 from March 29, 2020 through April 11, 2020. Claimant must repay the FPUC benefits he received.

While the claimant may not be eligible for regular State of Iowa unemployment insurance benefits, he may be eligible for unemployment insurance benefits that have been made available to claimants under the Coronavirus Aid, Relief, and Economic Security Act (“Cares Act”). The Pandemic Unemployment Assistance (“PUA”) section of the Cares Act discusses eligibility for claimants who are unemployed due to the Coronavirus. For claimants who are ineligible for regular unemployment insurance benefits under Iowa Code Chapter 96, they may be eligible under PUA.

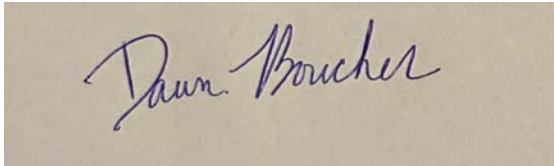
Note to Claimant: If this decision determines you are not eligible for regular unemployment insurance benefits and you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for 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>.

DECISION:

The June 2, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant is not eligible for benefits effective March 29, 2020 due to working the same hours and wages. The claimant has been overpaid unemployment insurance benefits of \$153.00 for the weeks between March 29, 2020 and April 11, 2020 and is obligated to repay the agency those benefits he received. The claimant has been overpaid FPUC benefits of \$1,200.00 from March 29, 2020 through April 11, 2020 and he is required to repay the agency those benefits he received as well.

REMAND:

The issue of whether the claimant was able to and available for work and working the same hours and same wages with this employer from March 15, 2020 through March 28, 2020 is remanded to the benefits bureau for an initial investigation and determination, as well as whether the claimant is overpaid benefits from March 15, 2020 through March 28, 2020.

A rectangular area containing a handwritten signature in blue ink that reads "Dawn Boucher". The signature is written on a light-colored, textured background.

Dawn Boucher
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

July 1, 2020
Decision Dated and Mailed

db/scn