

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

Appeal Number: 11IWDUI005

OC: 6/27/10

Claimant: Appellant (6)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

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.

**CYNTHIA WAGNER
4132 E. 29TH STREET
DES MOINES, IA 50317-4208**

STATE CLEARLY

**IOWA WORKFORCE DEVELOPMENT
SHANLYN SEIVERT
REEMP. SERVICES COORDINATOR
430 EAST GRAND AVE.
DES MOINES, IA 50309**

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.

DAN ANDERSON, IWD

(Administrative Law Judge)

February 25, 2011

(Decision Dated & Mailed)

Iowa Code section 17A.12(3) – Default
871 Iowa Administrative Code 26.14(6)-(7) – Failure to Appear

STATEMENT OF THE CASE

Cynthia Wagner filed an appeal from a decision issued by Iowa Workforce Development (the Department) dated December 13, 2010, reference 02. A Notice of Telephone Hearing was mailed to all parties on February 4, 2011 setting a hearing date of February 25, 2011 at 10:30 AM. The notice contained instructions regarding how to participate in the telephone hearing. Neither the appellant nor any representative from Iowa Workforce Development (the Department) called in to participate in the hearing at the date and time indicated.

The Iowa Administrative Procedure Act provides that if a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding

officer may enter a default decision.¹ Iowa Workforce Development regulations give the presiding officer discretion regarding whether to proceed with a hearing in the absence of one or more of the parties.² In this case, a hearing was not held and a default decision was entered against the appellant.

The challenge for the administrative law judge when neither party appears for a contested case hearing is that the administrative file is typically not sufficient, without testimony from either the appellant or the Department, to review. A contested case hearing is designed to flesh out both the reasoning of the Department in making the decision and the appellant's justification for appeal. The task of the administrative law judge is to determine, after careful consideration of the evidence available, whether the Department's decision under appeal was correct. This task is rendered nearly impossible when neither party appears for hearing. Additionally, it seems a waste of judicial resources to issue lengthy decisions on the merits in cases where neither party has enough investment in the outcome to appear at the contested case hearing and support its position.

DECISION

The appellant's appeal is dismissed. The Department shall take any action necessary to implement this decision.

lel

¹ Iowa Code § 17A.12(3) (2009).

² 871 Iowa Administrative Code 26.14(6)-(7).