IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

	APPEAL 20A-UI-05828-HP-T
CARLOS MCCLAIN Claimant	**ADMINISTRATIVE LAW JUDGE DECISION**
EXPRESS SERVICES INC Employer	
	OC: 08/11/19 **Claimant: Appellant (6)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1)J – Timely Request for Another Job Assignment
Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

Claimant Carlos McClain filed an appeal from a June 8, 2020 (reference 04) unemployment insurance decision that denied benefits. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for July 10, 2020, at 8:00 a.m. 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 appellant could be reached for the scheduled hearing and no hearing was held.

ISSUE:

Whether the appeal should 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 appellant failed to provide a telephone number at which the appellant could be reached 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 call or register online with the Appeals Bureau to provide a telephone number and/or name of a representative.

The hearing notice instruction specifically advises parties of the date and time of hearing. It also states:

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

> **Failure to Participate or Register for Appeal Hearing**
> 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 us 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. 871 IAC 26.14(7)

The information quoted above also appears on the hearing notice in Spanish.

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. 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 unemployment hearings.

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

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedure Act at Iowa Code section 17A.12(3) provides that if a party fails to appear or participate in a hearing after proper service of notice, the judge may enter a default decision or proceed with the hearing and make a decision in the absence of the party. The statute further states that if a party makes a timely request to vacate the decision and shows good cause for failing to appear, the judge shall vacate the decision and conduct another hearing.

Iowa Admin. Code r. 871-26.14(7) provides, in pertinent part:

> (7) 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 section 17A.12(3).
>
> 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.

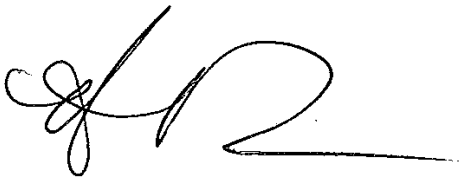
If the appellant disagrees with this decision, the appellant may appeal the decision directly to the Employment Appeal Board, whose address is listed at the top right caption.

While the claimant may not be eligible for regular State of Iowa unemployment insurance benefits, the claimant 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. This decision denies benefits. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

DECISION:

The June 8, 2020 (reference 04) unemployment insurance decision denying unemployment insurance benefits remains in effect, as the appellant is in default and the appeal is dismissed.



Heather L. Palmer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

July 17, 2020
Decision Dated and Mailed

hlp/sam