

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CHARLINE MILLER
Claimant

APPEAL NO: 20A-UI-08988-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS & RECOVERY**
Employer

OC: 02/02/20
Claimant: Appellant (6)

Iowa Code § 96.5(13) * 96.16(4) – Unpaid Fraud Overpayment
Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

Charline Miller filed a late appeal from the February 11, 2020, reference 03, decision that held she was not eligible for benefits, based on the investigator's conclusion that the claimant had an unpaid fraud overpayment. A notice of hearing was mailed to Ms. Miller's last-known address of record for a telephone hearing to be held at 9:30 a.m. on September 14, 2020. A notice of hearing was provided to the Iowa Workforce Development Investigations & Recovery unit. The claimant/appellant, Ms. Miller, failed to respond to the hearing notice instructions to register a telephone number at which she could be reached for the hearing. The Investigations & Recovery unit did not register a telephone number for the hearing, but provided proposed exhibits in lieu of otherwise participating in the appeal hearing. Based upon the claimant/appellant's failure to participate in the hearing and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

ISSUE:

Should the appeal be dismissed based upon the claimant/appellant not participating in the hearing?

FINDINGS OF FACT:

The claimant, Charline Miller, is the appellant in this matter. The claimant was properly notified of the appeal hearing set for 9:30 a.m. on September 14, 2020 through the hearing notice that was mailed to her last-known address of record on August 26, 2020. The claimant did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. The claimant did not comply with the hearing notice instructions to register a telephone number at which she could be reached for the hearing. The claimant did not provide a telephone number in her appeal. The claimant has not provided the Appeals Bureau with a telephone number since filing the appeal.

The February 11, 2020, reference 03, decision held that Ms. Miller was not eligible for benefits, based on the investigator's conclusion that Ms. Miller had an unpaid fraud overpayment.

Ms. Miller's appeal from the decision is on its face late. The decision provided a February 21, 2020 deadline for appeal. The appeal was filed on July 27, 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.

Iowa Administrative Code rule 871-26.14(7) provides:

(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 provide in Iowa Code section 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.

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.

The claimant/appellant appealed the representative's decision but failed to participate in the hearing. The claimant/appellant has therefore defaulted on her appeal pursuant to Iowa Code §17A.12(3) and Iowa Admin. Code r. 871-24.14(7), and the representative's decision remains in force and effect.

DECISION:

The claimant defaulted on her appeal. The appeal is dismissed. The February 11, 2020, reference 03, decision that held the claimant was not eligible for benefits, based on the investigator's conclusion that the claimant had an unpaid fraud overpayment, remains in effect.

A rectangular box containing a handwritten signature in cursive script that reads "James E. Timberland".

James E. Timberland
Administrative Law Judge

September 24, 2020
Decision Dated and Mailed

jet/sam