

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**NIKO S. FONSECA**  
Claimant

**EMPIRICAL FOODS, INC.**  
Employer

**APPEAL 20A-UI-09903-BH-T  
ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/10/20  
Claimant: Appellant (6)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview  
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search  
Iowa Code § 17A.12(3) – Default Decision  
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

**STATEMENT OF THE CASE:**

Fonseca appealed the August 18, 2020 (reference 01) unemployment insurance decision that denied benefits. Fonseca is therefore the appellant.

Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for September 28, 2020, at 9:00 a.m. A review of the Appeals Bureau's conference call system indicates that Fonseca 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 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 Fonseca was not eligible for unemployment insurance benefits under state law.

**REASONING AND CONCLUSIONS OF LAW:**

The Iowa Administrative Procedure Act at Iowa Code § 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.

**DECISION:**

The August 18, 2020 (reference 01) unemployment insurance decision denying benefits remains in effect as Fonseca, the appellant, is in default and the appeal is dismissed.

Even though Fonseca is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he is eligible for such compensation for the week claimed. Fonseca must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

**NOTE TO CLAIMANT:**

- This decision determines you are not eligible for regular unemployment insurance benefits. If 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.
- If you do not qualify for regular unemployment insurance benefits due to disqualifying separations and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** More information about how to apply for PUA is available online at:

[www.iowaworkforcedevelopment.gov/pua-information](http://www.iowaworkforcedevelopment.gov/pua-information)



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Ben Humphrey  
Administrative Law Judge

September 29, 2020  
Decision Dated and Mailed

bh/scn