

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

THOMAS T BRADSHAW
Claimant

APPEAL 23A-UI-05690-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

METRO WASTE AUTHORITY
Employer

**OC: 04/16/23
Claimant: Appellant (6)**

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Admin. Code r. 871-24.25(4) – Voluntary Quit by Written Rule of the Employer
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, Thomas D. Bradshaw, filed an appeal from the March 23, 2023, (reference 01) unemployment insurance decision that denied benefits effective April 20, 2023 reasoning the claimant quit without good cause attributable to the employer. The representative issued this decision relying on Iowa Admin. Code r. 871-24.25(4) (stating a failure to report to work or call in with a valid excuse in violation of a written employer rule, shall constitute a quit without good cause.) The parties were properly notified about the hearing.

On June 13, 2023, Iowa Legal Aid attorney, Dustin Coffman, entered his appearance and made the following requests: (1) issuance of a subpoena, (2) a copy of the fact-finding file containing exhibits and notes of the representative, and (3) a postponement to give time for discovery. The administrative law judge rejected the postponement. The Appeals Bureau provided a copy of the fact-finding file to both parties and explained through a clerk that the existing hearing date would be used to further understand any additional evidentiary requests. He saw no reason to postpone absent a showing the employer would not comply with the claimant's request. Any evidentiary requests would have to reasonably relate to material facts regarding the separation. In any event, the postponement request was seen as predicated on the need for additional time for discovery. Mr. Coffman withdrew his appearance on the morning of the hearing. In his withdrawal, Mr. Coffman recognized the administrative law judge's rejection of the postponement request and stated he had insufficient time to complete discovery requests in the time. No further explanation was given for what additional discovery needed to be performed.

A telephone hearing was scheduled to be held on June 26, 2023 at 2:00 p.m. Human Resources Manager Emily Dobbins, Recycling Administrator Dan Haag, Material Recovery and Facilities Manager PJ Gasparovich were ready to participate for the employer. On the hearing record, the administrative law judge explained previous evidentiary rulings. The appellant failed to call the toll-free number listed on the hearing notice to participate in the scheduled hearing and therefore, no hearing was held.

ISSUE:

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

FINDINGS OF FACT:

The appellant was properly notified of the scheduled hearing for this appeal. The appellant failed to call in to participate in the scheduled hearing before the record was closed, as required by the hearing notice. The claimant made a request to postpone the hearing on June 13, 2023. It requested postponement at least three weeks past the hearing date of June 26, 2023, so that discovery could be performed. It made no observations about the inability of the claimant or Mr. Coffman to attend the hearing on its date and time. The request provided no explanation for how much discovery had to yet to be conducted. The Appeals Bureau did not receive any notification about what if any discovery had even been begun prior to the hearing date. The administrative law judge provided the factfinding file within days of receiving the request. The administrative law judge rejected this request absent of a showing the employer rejected requests for documents. His rationale, expressed through a clerk, was that the hearing date would be used as an evidentiary conference, if needed, given no information regarding the scope of discovery had been given. The claimant made no further effort to explain. More importantly, neither the claimant nor his attorney called in on the date of the hearing to provide an explanation or otherwise participate.

The hearing notice instruction specifically advises parties as follows:

IMPORTANT NOTICE!

YOU MUST CALL the toll-free number: ... at the time of the hearing. You may call up to 5 minutes before the hearing. You are not the organizer – Do NOT press 2. The administrative law judge **WILL NOT** call you for the hearing, you **MUST** call into the number provided above to participate. **Failure to participate in the hearing may result in the dismissal of your appeal.**

The record was left open for a period after the initial hearing start time to give the appellant a reasonable opportunity to participate. Holding the appellant in default for failure to appear and participate during the grace period after the hearing start time is entirely reasonable considering the time allocated for unemployment hearings. The May 23, 2023 (reference 01) unemployment insurance decision determined the claimant quit without good cause on April 20, 2023. The decision reasoned the claimant failed to report to work for three days in a row and did not notify the employer of the reason.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedures 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.

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.

Iowa Admin. Code r. 871-26.8(3), (4) and (5) provide:

Withdrawals, dismissals, and postponements.

(3) If, for good cause, a party, having received due notice, is unable to attend a hearing or request postponement within the prescribed time, the presiding officer may, if no decision has been issued, reopen the record and, with notice to all parties, schedule another hearing.

“Good cause” for purposes of this rule is defined as an emergency circumstance that is beyond the control of the party and that prevents the party from being able to participate in the hearing. Examples of good cause include, but are not limited to, death, sudden illness, or accident involving the party or the party’s immediate family (spouse, partner, children, parents, sibling) or other circumstances evidencing an emergency situation which was beyond the party’s control and was not reasonably foreseeable. Examples of circumstances that do not constitute good cause include, but are not limited to, a lost or misplaced notice of hearing, confusion as to the date and time for the hearing, failure to follow the directions on the notice of hearing, oversleeping, or other acts demonstrating a lack of due care by the party.

(4) A request to reopen a record or vacate a decision must be made in writing. If necessary, the presiding officer may hear, ex parte, additional information regarding the request for reopening. The granting or denial of such a request may be used as a grounds for appeal to the employment appeal board of the department of inspections and appeals upon the issuance of the presiding officer’s final decision in the case.

(5) If good cause for postponement or reopening has not been shown, the presiding officer shall make a decision based upon whatever evidence is properly in the record.

Iowa Admin. Code r. 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.

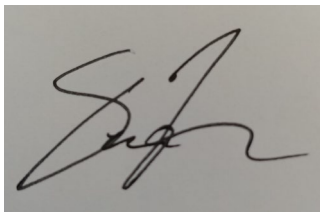
Due process requires notice and an opportunity to be heard, both of which were provided to the parties. The appellant is responsible for going forward with the case in a prompt and thoughtful manner. The appellant must be present at the start of the hearing to avoid a default judgment. Iowa Code § 17A.12(3) and Iowa Admin. Code r. 26.14(7). The hearing notice instructs the parties to call the toll-free number on the front of the notice at the time of the hearing to participate.

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 or during the grace period prior to the record being closed.

Mere request of postponement is not sufficient. The postponement must be for "good cause." No such showing was made here. Two weeks passed after the Appeals Bureau provided the claimant with the factfinding file. No effort was made to explain why additional time was needed. No explanation was given for what additional discovery requests needed to be performed. Even if additional time had been needed, that circumstance does not excuse a party from appearing and providing explanation. Judges are asked to make informed decisions. To grant the claimant's request given this record would threaten not only his ability to serve as a faithful steward of the rules, but also his ability to conduct these hearings efficaciously. The representative's decision remains in force and effect.

DECISION:

The May 23, 2023 (reference 01) unemployment insurance decision remains in effect as the appellant is in default and the appeal is dismissed.



Sean M. Nelson
Administrative Law Judge II
Iowa Department of Inspections & Appeals
Administrative Hearings Division – UI Appeals Bureau

June 29, 2023
Decision Dated and Mailed

smn/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.