

IOWA DEPARTMENT OF INSPECTIONS AND  
APPEALS

Division of Administrative Hearings  
Wallace State Office Building  
Des Moines, Iowa 50319

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**MARLENE JACOBSON**  
**383 BISON TRAIL**  
**DAKOTA DUNES, SD 57059**

**DAVE EKLUND**  
**IOWA WORKFORCE DEVELOPMENT**  
**INVESTIGATIONS AND RECOVERY**  
**150 DES MOINES STREET**  
**DES MOINES IA 50309**

JONI BENSON, IWD

**Appeal Number: 13IWDUI442**

**OC: 8/12/12**

**Claimant: Appellant (6)**

**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, 4<sup>TH</sup> 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.

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.

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.

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(Administrative Law Judge)

October 31, 2013

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(Decision Dated & Mailed)

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

**STATEMENT OF THE CASE**

The claimant filed an appeal of a representative's decision dated September 10, 2013, reference 01. A Notice of Telephone Hearing was mailed to all parties on October 2, 2013 setting a hearing date of October 29, 2013 at 9:30 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.<sup>1</sup> 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.<sup>2</sup> In this case, a hearing was not held and a default decision was entered against the appellant.

When neither party appears to present evidence at a contested case hearing, the administrative file is rarely sufficient to support a decision on the merits of the 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 is a waste of judicial resources to issue detailed 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.

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<sup>1</sup> Iowa Code § 17A.12(3) (2013).

<sup>2</sup> 871 Iowa Administrative Code 26.14(6)-(7).