IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

MARSHEA S HILL Claimant **WALMART ASSOCIATES** Employer	**APPEAL 22A-UI-07938-DZ-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 03/06/22** **Claimant: Respondent (6)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-Finding Interview
Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

Walmart Associates., the employer/appellant, filed an appeal from the March 21, 2022, (reference 02) unemployment insurance decision that allowed benefits. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for May 9, 2022. The employer did not call the toll-free number listed on hearing notice at the time the hearing was scheduled to begin. Ms. Hill did not call the toll-free number listed on hearing notice at the time the hearing was scheduled to begin. Because the employer filed the appeal but did not call in, no hearing was held.

ISSUE:

Should the employer's appeal be dismissed based on it not appearing and participating?

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing for this appeal. The employer did not call the toll-free number listed on the hearing notice at the time scheduled for this appeal hearing. The employer did not request a postponement of the hearing before the hearing date. The employer did not call in before the record was closed, 15 minutes after the hearing was scheduled to begin. No hearing was held.

The hearing notice lists the hearing date of May 9, 2022, and the hearing time as 9:00 a.m. Iowa time. The hearing notice also advises parties:

> **IMPORTANT NOTICE!**
> **YOU MUST CALL** the toll-free number **866-783-7021** at the time of the hearing. When instructed enter the PIN Number . . . followed by the pound key [#[and wait for the administrative law judge to begin the hearing.

> 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 dismissal of your appeal.**

The back page of the hearing notice provides further instruction and warning in English and Spanish:

> You must call the toll-free number on the front of this notice at the time of the hearing to participate.
>
> **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 will not call you to participate in the hearing. Instructions for participating are on the other side of this page. 871 IAC 26.14(7)

The record was left open for a grace period of 15 minutes after the hearing start time to give the employer a *reasonable* opportunity to participate. This reasonable amount of time is appropriate because if a hearing were conducted with the non-appealing party alone it would have likely concluded in 15 minutes or less. Holding the employer in default for not appearing and participating during a 15-minute window after the hearing start time is reasonable considering the time allocated for each unemployment hearing. Allowing this additional time period is more than reasonable under the circumstances.

The unemployment insurance decision had concluded that Ms. Hill was eligible for UI benefits.

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.

The Agency rules at Iowa Admin. Code r. 26.14(7) provide:

> 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 in writing to reopen the hearing 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:

1. Read the hearing notice.
2. Register a telephone number where the party can be reached for the hearing.
3. Be available at that number at the date and time of the hearing.

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 employer was not present at the start of the hearing. As a *courtesy*, the employer was granted additional time not required by statute or rule. The representative's decision remains in force and effect.

DECISION:

The March 21, 2022, (reference 02) unemployment insurance decision allowing benefits remains in effect as the employer is in default and the appeal is DISMISSED.



Daniel Zeno
Administrative Law Judge
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May 26, 2022
Decision Dated and Mailed

dz/kmj