

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**Terry McDole**  
Claimant

**DIA APPEAL NO. 22IWDUI0048  
IWD APPEAL NO. 21A-UI-19053**

**Menards**  
Employer

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 7/18/21  
Claimant: Appellant (6)**

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Iowa Code § 96.5(2)(a); 96.5(1) - Discharge for Misconduct; Voluntary Quit  
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default  
Iowa Code § 17A.12(3) – Default Decision

**STATEMENT OF THE CASE:**

Terry McDole ("McDole" or "the claimant") filed an appeal from the August 24, 2021 (reference 01) unemployment insurance decision that concluded he was ineligible for unemployment insurance benefits. Notice of hearing was mailed to McDole's last known address of record for a telephone hearing scheduled for November 5, 2021. The notice of hearing mailed to McDole on October 18, 2021 instructed him to call a toll-free conference number at the assigned time. On the date and time of the scheduled hearing, the undersigned administrative law judge appeared and waited for 15 minutes to allow for late callers. Neither the claimant nor the employer appeared. Because McDole failed to follow the instructions on the notice of hearing and did not call in on the date and time scheduled, no hearing was held.

**ISSUE:**

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

**FINDINGS OF FACT:**

McDole was properly notified of the scheduled hearing for this appeal. McDole did not call into the conference call at the time scheduled for this appeal hearing as required by the hearing notice. McDole did not request a postponement of the hearing. No hearing was held.

The hearing notice specifically advised the parties:

**DATE:** November 5, 2021  
**TIME:** 1:00 p.m. Central Time  
**ALJ:** Kristine Dreckman (Email: kristine.dreckman@dia.iowa.gov)  
**TOLL-FREE HEARING PHONE NUMBER: 1-855-841-8570**

At the date and time of the hearing, all parties must call the toll-free hearing number listed above. Important additional instructions for participating in this hearing are on

the next page of this Notice. Failure to appear and participate in the hearing may result in the entry of a default judgment.

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

**It is your responsibility to call in for the hearing. The judge will not call you. If you do not call using the above instructions, you will not be able to participate in the hearing. If you have technical difficulties connecting at the time of hearing, please call (515) 281-6468.**

Representatives for the employer Menards also failed to call into the conference number at the date and time of the scheduled hearing. The undersigned administrative law judge waited on the conference line for 15 minutes to allow the parties a reasonable opportunity to participate. Holding McDole in default for failure to appear and participate within a 15-minute window after the hearing start time is reasonable considering the time allocated for each unemployment hearing. The unemployment insurance decision had concluded McDole was not eligible for unemployment insurance benefits.

#### **REASONING AND CONCLUSIONS OF LAW:**

The Iowa Administrative Procedure 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.**

Agency rules at Iowa Admin. Code r. 26.14(7)(c) provides:

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 § 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.

**c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.** (Emphasis added.)

The Iowa Supreme Court has opined that a default should not be set aside for ordinary negligence or want of ordinary care. Defaults should not be set aside where the movant ignores plain instruction with ample opportunity to comply. *See Houlihan v. Emp't Appeal Bd.*, 545 N.W.2d 863 (Iowa 1996). Here, the clear directive is to read the hearing notice and call the toll-free hearing phone number at the listed hearing time. If the party has technical difficulties connecting to the

hearing phone number, a second number ((515) 281-6468) is provided. Due process requires notice and an opportunity to be heard, both of which were provided to each party. *The rule does not provide exceptions for good intentions and/or a party contacting the Appeals Bureau within a 'reasonable' or certain amount of time after the hearing is scheduled.* It is assumed an appellant intends to participate in the hearing simply by the fact that an appeal is filed, but the appellant's responsibility does not end there. Each party is required to follow the prominent specific written instructions printed on the hearing notice. McDole filed the appeal and is held solely responsible for going forward with the case in a prompt and deliberate manner. The rule holds an appellant in default if not present *at the start* of hearing. As a courtesy, McDole was granted an additional 15-minute grace period not required by statute or rule.

Here, notwithstanding notice, opportunity and additional time, McDole failed to prosecute the case at the appointed date and time without providing a good-cause reason for the delay or failure to do so. Accordingly, McDole is in default, and the appeal shall be dismissed. Iowa Code § 17A.12(3) and Iowa Admin. Code r. 26.14(7). The unemployment insurance decision remains in force and effect.

If McDole does not intend to pursue this appeal, he need not take any action. If McDole intends to pursue this appeal, he must make a written request to the administrative law judge that the hearing be reopened within 15 days after the mailing date of this decision. The written request should be mailed to the address listed at the end of this decision and must explain the emergency or other good cause that prevented him from participating in the hearing. McDole also has the option to appeal the decision directly to the Employment Appeal Board at the address listed in the captioned appeal rights information.

**DECISION:**

The August 24 2021 (reference 01) unemployment insurance decision concluding McDole was not eligible for unemployment compensation benefits remains in effect, as he is in default, and the appeal is dismissed.



Kristine M. Dreckman  
Administrative Law Judge  
Department of Inspections and Appeals  
Administrative Hearings Division  
(515) 281-6440

November 8, 2021


Decision Dated and Mailed

KMD:aa

CC: Terry McDole (by first class mail); Menards (by first class mail); Natali Atkinson (email);  
Joni Benson (email)

**Case Title:** MCDOLE V. MENARDS  
**Case Number:** 22IWDUI0048  
**Type:** Order - Abandonment/Default

IT IS SO ORDERED.



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Kristine Dreckman, Administrative Law Judge