

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JEFFRY D WIELING
Claimant

M A MORTENSON CO
Employer

APPEAL NO: 21A-UI-03872-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Appellant (6)

Iowa Code § 96.5(1) – Voluntary Quit
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 filed a late appeal from the July 10, 2020, reference 02, decision that disqualified him for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on March 6, 2020 without good cause attributable to the employer. A notice of hearing was mailed to the parties' last-known addresses of record for a telephone hearing to be held at 10:00 a.m. on March 8, 2021. The hearing in this matter was consolidated with the hearing in Appeal Number 21A-UI-03873-JTT. The employer registered a telephone number for the hearing and was available through Mel Elliott. A review of the Appeals Bureau's conference call system indicates that the claimant/appellant, Jeffry Wieling, failed to respond to the hearing notice instructions to register a telephone number at which he could be reached for the hearing. Based upon the claimant/appellant's failure to participate in the hearing and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

ISSUE:

Should the appeal be dismissed based upon the claimant/appellant not participating in the hearing?

FINDINGS OF FACT:

The claimant is the appellant in this matter and in a companion appeal number. The claimant was properly notified of the appeal hearing set for 10:00 a.m. on March 19, 2021 through the hearing notice that was mailed to the claimant's last-known address of record on March 8, 2021. The claimant did not participate in the hearing. The claimant did not comply with the hearing notice instructions to register a telephone number at which he could be reached for the hearing. The claimant did not provide a telephone number in his appeal. The claimant has not provided the Appeals Bureau with a telephone number since filing the appeal.

At 2:53 p.m. on March 18, 2021, the claimant emailed an untimely reschedule request to the Appeals Bureau. The claimant wrote:

To The Appeals Board:

I need to ask for a rescheduling of my unemployment hearings 03872 and 03873 as today is March 18, 2021 and I just received the paperwork in my mailbox. I read the back of the letter and I know this request was supposed to be done at least 3 days prior to the hearing but unfortunately that was not possible due to the fact that I didn't have 3 days notice. I need more notice in able to take time off of work for the hearing as I drive a truck and I don't find it a safe practice to drive and talk at the same time, plus in my truck it is very loud and I don't want to have to ask anyone to repeat themselves.

Also, I noticed that I have 2 separate appeals scheduled 5 minutes apart and I don't know if that means they are both done on the same call or not. Would someone be able to let me know how that works, please?

This email is the fastest way to reach me at the current time if you have any questions. Thank you for your time and consideration.

Sincerely,

Jeffry Wieling

At 6:37 p.m. on March 18 2020, the administrative law judge emailed the following response to the claimant at the email address the claimant had used to submit the untimely reschedule request:

Good evening.

This message is for Jeffry Wieling. Please immediately register a telephone number with the Appeals Bureau so that we can discuss your untimely request to move the hearing that is set tomorrow at 10:00 a.m. The instructions for registering a number online are on the hearing notice. Our staff will start answering the phone tomorrow at 7:15 a.m.

You may also provide a telephone number in response to this message, but should do so immediately. If you do that, please indicate in your message the earliest time you would be available to receive a call tomorrow morning.

If and when you respond to this message, do not go into the facts concerning your employment or separation from M. A. Mortenson Company, the timeliness of your appeal, or the overpayment issue. The law forbids me from discussing those matters outside the hearing without the other side of the case present. Any discussion outside the hearing will be limited to your request to reschedule the hearing.

The hearing set for tomorrow is a consolidated hearing set to start at 10:00 a.m. The 5-minute staggering of the start time on the hearing notices is a formality required by our scheduling system.

Thank you for your timely attention to this matter.

The hearing remains scheduled for tomorrow at 10:00 a.m. unless and until we speak and unless and until I clearly indicate the hearing will be rescheduled.

James E. Timberland
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 E. Grand Ave.
Des Moines, IA 50319
515-281-3747

The claimant did not respond to the administrative law judge's message and did not provide a telephone number so that the administrative law judge could inquire further into the untimely reschedule request.

The July 10, 2020, reference 02, decision disqualified the claimant for benefits and held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on March 6, 2020 without good cause attributable to the employer. The claimant's appeal from the decision was on its face late. The decision included a July 20, 2020 appeal deadline. The claimant filed his appeal on January 26, 2021.

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.

Iowa Administrative Code rule 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.

The claimant/appellant appealed the representative's decision but failed to participate in the hearing. The claimant/appellant has therefore defaulted on his appeal pursuant to Iowa Code §17A.12(3) and Iowa Admin. Code r. 871-24.14(7), and the representative's decision remains in force and effect.

DECISION:

The claimant defaulted on his appeal. The appeal is dismissed. The July 10, 2020, reference 02, decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on March 6, 2020 without good cause attributable to the employer, remains in effect.



James E. Timberland
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

March 22, 2021
Decision Dated and Mailed

jet/lj

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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 under state law 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. For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA for the affected period, you will be required to repay the benefits you have received.**