

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MOUNIR R KHELELA
Claimant

APPEAL NO. 22A-UI-07192-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALMART ASSOCIATES
Employer

OC: 11/29/20
Claimant: Appellant (6)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence
Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.8(1) – Dismissal of Appeal

STATEMENT OF THE CASE:

Mounir R. Khelela (claimant/appellant) appealed the decision dated January 26, 2021 (reference 03) that concluded the claimant was not eligible for unemployment benefits due to being on a leave of absence. The claimant was given proper notice for a telephone hearing scheduled for May 6, 2022 at 8:00 a.m. A review of the Appeals Bureau's conference call system indicates that the appellant failed to call the toll-free number listed on the hearing notice at the time of the hearing. No hearing was held.

ISSUE:

Whether the appeal should 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 the toll-free number listed on the hearing notice at the time of the hearing. The appellant did not participate or request a postponement of the hearing as required by the hearing notice. Official notice of the Clear2there hearing control screen is taken to establish that appellant did not call at the time of the hearing.

The hearing notice instruction specifically advised the appellant of the date and time of hearing. It also states:

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 the dismissal of your appeal.**

The back page of the hearing notice provided further hearing instructions stating, "You must call the toll-free number on the front of this notice at the time of the hearing to participate."

As a courtesy to the appellant the record was left open for a minimum of 15 minutes after the hearing start time to give the appellant a reasonable opportunity to participate. Holding the appellant in default for failure to appear and participate during a 15-minute window after the hearing start time is reasonable considering the time allocated for unemployment hearings.

The representative's decision concluded that claimant was ineligible for benefits due to being on a leave of absence.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedure 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 Admin. Code r. 871-26.14(7) provides, in pertinent part:

(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 provided in Iowa Code section 17A.12(3).

In this case, the appellant did not call the toll-free number listed on the hearing notice at the time of the hearing. The appellant is in default. The appeal should be dismissed.

DECISION:

The January 26, 2021 (reference 02) unemployment insurance decision is affirmed. The decision remains in effect as the appellant is in default and the appeal is dismissed. Claimant is denied benefits effective November 29, 2020 due to a leave of absence.



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

May 19, 2022
Decision Dated and Mailed

jlb/kmj