

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DOMINICKA L MOORE
Claimant

APPEAL 21A-UI-05838-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

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

Iowa Code §96.3(7)– Recovery of Benefit Overpayment
Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

Dominicka L Moore, the claimant/appellant, filed an appeal from the February 16, 2021, (reference 04) unemployment insurance decision that concluded she was overpaid REGULAR unemployment insurance benefits. Iowa Workforce Development mailed a notice of hearing to Ms. Moore's last address of record for a telephone hearing scheduled for April 29, 2021. A review of the Appeals Bureau's conference call system indicates that Ms. Moore did not respond to the hearing notice and provide a telephone number at which she could be reached for the scheduled hearing. The employer registered for the hearing. Because Ms. Moore did not follow the instructions on the notice of hearing, no hearing was held.

ISSUE:

Should Ms. Moore's appeal be dismissed based on her not appearing and participating?

FINDINGS OF FACT:

Iowa Workforce Development notified Ms. Moore of the hearing. She did not respond to the hearing notice or otherwise provide a telephone number to the Appeals Bureau. She did not participate in the hearing or request a postponement. She did not follow the instructions on the hearing notice. Official notice is taken of the hearing control screen to establish that Ms. Moore did not provide a telephone number to the Appeals Bureau prior to the time of the scheduled hearing.

The hearing notice instruction specifically advises Ms. Moore of the date and time of the hearing. It also states:

IMPORTANT NOTICE!

YOU MUST PROVIDE YOUR PHONE NUMBER TO THE APPEALS BUREAU AS SOON AS POSSIBLE. If you do not follow these instructions, the judge will not call you for the hearing. You must also provide the name(s) and phone number(s) of any witnesses to the Appeals Bureau.

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

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 does not have a phone number for this hearing unless you provide it to us by following the instructions on the other side of this page. If you do not follow those instructions, the judge will not call you for the hearing. 871 IAC 26.14(7).

The information quoted above also appears on the hearing notice in Spanish.

As a courtesy to Ms. Moore, the administrative law judge left the record open for 15 minutes past the scheduled time of the hearing to give her a reasonable amount of time to call the Appeals Bureau to participate. Ms. Moore did not contact the Appeals Bureau or otherwise register for the hearing during that time period.

The unemployment insurance decision concluded Ms. Moore was overpaid REGULAR unemployment insurance benefits in the amount of \$1,736.00 for 14 weeks between April 12, 2020 and July 18, 2020.

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

DECISION:

The February 16, 2021, (reference 04) unemployment insurance decision concluding Ms. Moore was overpaid REGULAR unemployment insurance benefits remains in effect as Ms. Moore is in default and the appeal is dismissed.



Daniel Zeno
Administrative Law Judge
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May 5, 2021
Decision Dated and Mailed

dz/scn