

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RACHEL M KIRBY
Claimant

PILOT TRAVEL CENTERS LLC
Employer

APPEAL 22A-UI-03027-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (6R)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

On January 11, 2022, Rachel Kirby (claimant/appellant) filed an appeal from the Iowa Workforce Development decision dated January 27, 2021 (reference 01) that denied unemployment insurance benefits as of October 25, 2020 based on a finding that claimant was still employed for the same hours and wages and therefore not partially unemployed.

Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for March 1, 2022 at 8 a.m. Companion cases set for 8:05 and 8:10 a.m. were to be heard at the same time.

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.

ISSUES:

- I. Should the appeal be dismissed based on the appellant's failure to appear and participate?

FINDINGS OF FACT:

The parties were 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 and 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 in to participate.

The hearing notice instruction specifically advises parties 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 provides 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." This information also appears on the hearing notice in Spanish.

The record was left open for a minimum of 15 minutes after the hearing start time as courtesy to the appellant. The appellant did not register a number or call in to participate within that timeframe.

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 Admin. Code r. 26.14(7) 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.

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 appellant. The appellant filed the appeal and is solely responsible for prosecuting the case in a timely and deliberate manner. The rule holds appellant in default if not present at the start of hearing. As a courtesy, appellant was granted additional time not required by statute or rule. Here, notwithstanding additional time, notice, and opportunity, the appellant failed to prosecute the case promptly by calling the toll-free number listed on the hearing notice at the time of the hearing and participating. As such the appellant is in default and the appeal shall be dismissed. The representative's decision remains in force and effect.

DECISION:

The decision dated January 27, 2021 (reference 01) that denied unemployment insurance benefits as of October 25, 2020 based on a finding that claimant was still employed for the same hours and wages and therefore not partially unemployed remains in effect, as the appellant is in default. The appeal is dismissed.

REMAND:

This matter is remanded to the Investigations and Recovery Unit of IWD for a determination as to whether claimant was properly reporting wages earned during each week filed in the March 29, 2020 claim year.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

March 14, 2022
Decision Dated and Mailed

abd/abd