

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ALLYSON K VESPA
Claimant

BWW RESOURCES LLC
Employer

APPEAL NO: 20A-UI-04706-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (6)

Iowa Code § 96.5(2)(a) – Discharge for Misconduct
Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default
Iowa Code 96.3(7) – Recovery of Overpaid Benefits
Public Law 116-136, Section 2104(b) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

The claimant, Allyson Vespa, filed a timely appeal from the May 19, 2020, reference 01, decision that held she was disqualified for benefits and the employer's account would not be charged for benefits, based on the deputy's conclusion that Ms. Vespa was discharged on March 2, 2020 for excessive unexcused absences. A notice of hearing was mailed to the parties' last-known addresses of record for a telephone hearing to be held at 9:00 a.m. on June 15, 2020. A review of the Appeals Bureau's conference call system indicates that the claimant/appellant, Ms. Vespa, did not respond to the hearing notice instructions to register a telephone number at which she could be reached for the hearing. The employer also did not provide a number for the appeal 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. The administrative law judge hereby takes official notice of the Agency's administrative record of benefits disbursed to the claimant (DBRO and KPYX).

ISSUES:

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

Whether the claimant has been overpaid regular state unemployment insurance benefits.

Whether the claimant has been overpaid Federal Pandemic Unemployment Compensation.

FINDINGS OF FACT:

The claimant, Allyson Vespa, is the appellant in this matter. The claimant was properly notified of the appeal hearing set for 9:00 a.m. on June 15, 2020 through the hearing notice that was mailed to her last-known address of record on June 3, 2020. The claimant did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. The claimant did not comply with the hearing notice instructions to register a telephone number at

which she could be reached for the hearing. The claimant did not provide a telephone number in her appeal. The claimant has not provided the Appeals Bureau with a telephone number since filing the appeal.

The May 19, 2020, reference 01, decision held that Ms. Vespa was disqualified for benefits and the employer's account would not be charged for benefits, based on the deputy's conclusion that Ms. Vespa was discharged on March 2, 2020 for excessive unexcused absences.

Ms. Vespa received \$2,079.00 in regular benefits for seven weeks between March 22, 2020 and May 9, 2020. Ms. Vespa also received \$3,600.00 in Federal Pandemic Unemployment Compensation for six weeks between March 29, 2020 and May 9, 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.

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 her 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.

Iowa Code section 96.3(7) provides that if a claimant receives benefits and is deemed ineligible for the benefits, Workforce Development must recover the benefits and the claimant must repay the benefits, even if the claimant was not at fault in receiving the benefits.

Because the May 19, 2020, reference 01, decision disqualified the claimant for benefits and remains in effect, the \$2,079.00 in regular state benefits that the claimant received for seven weeks between March 22, 2020 and May 9, 2020 constitutes an overpayment of benefits that the claimant must repay.

PL116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

(f) Fraud and Overpayments

(2) Repayment.--In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

Because the claimant is disqualified from receiving regular unemployment insurance (UI) benefits, the claimant is also disqualified from receiving Federal Pandemic Unemployment Compensation (FPUC). The \$3,600.00 in FPUC benefits the claimant received for the six-week period ending May 9, 2020 constitutes an overpayment of benefits. Claimant is required to repay those benefits.

DECISION:

The claimant defaulted on her appeal. The appeal is dismissed. The May 19, 2020, reference 01, decision that held the claimant was disqualified for benefits and the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant was discharged on March 2, 2020 for excessive unexcused absences, remains in effect. The claimant is overpaid \$2,079.00 in regular benefits for seven weeks between March 22, 2020 and May 9, 2020. The claimant is overpaid \$3,600.00 in Federal Pandemic Unemployment Compensation for six weeks between March 29, 2020 and May 9, 2020. The claimant must repay the overpaid state and federal benefits.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



James E. Timberland
Administrative Law Judge

June 26, 2020
Decision Dated and Mailed

jet/scn