

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**PAUL K METTO**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL 21R-UI-19356-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/12/20**  
**Claimant: Appellant (6)**

Iowa Code § 96.19(38) – Total and Partial Unemployment  
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages  
Iowa Code § 96.4(3) – Able to and Available for Work  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment  
Iowa Code § 96.6(2) – Timely 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:**

Paul K Metto, the claimant/appellant, filed an appeal from the October 19, 2020, (reference 01) unemployment insurance (UI) decision that denied benefits as of July 12, 2020. A telephone hearing was scheduled for June 11, 2021. The parties were properly notified of the hearing. Mr. Metto did not provide a telephone number at which he could be reached for the scheduled hearing. The employer registered for the hearing. The employer's representative was present and ready to proceed with the hearing as scheduled. The administrative law judge left the record open for a grace period of 15 minutes after the hearing start time to give Mr. Metto a reasonable opportunity to participate. He did not call in during the 15 minute grace period. No hearing was held. The administrative law judge concluded that Mr. Metto was in default and dismissed his appeal.

Mr. Metto appealed to the Employment Appeal Board (EAB). The EAB remanded (sent back) the case to an administrative law judge for a new hearing. A new hearing was scheduled for October 25, 2021. Notices of hearing were mailed to the parties' last known addresses of record. Mr. Metto registered for the hearing, but did not respond at the telephone number he provided at the time the hearing was scheduled to begin. The employer's representative was present and prepared to proceed with the hearing as scheduled. The administrative law judge left the record open for a grace period of 15 minutes after the hearing start time to give Mr. Metto a reasonable opportunity to participate. He did not call in during the 15 minute grace period. No hearing was held.

**ISSUE:**

Should Mr. Metto's appeal be dismissed based on him not appearing and participating?

## **FINDINGS OF FACT:**

The parties were properly notified of the scheduled hearing for this appeal. Mr. Metto did not answer the administrative law judge's call at the telephone number he provided at the time scheduled for this appeal hearing. He was not available at the telephone number he provided for the scheduled hearing. He did not request a postponement of the hearing. No hearing was held.

The hearing notice instruction advises parties in English and Spanish:

### **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.

The hearing notice lists the hearing date of October 25, 2021 and the hearing time as 8:00 a.m. Iowa time. The back page of the hearing notice provides further warning in both languages:

You must register a phone number for each hearing by following the instructions on the front of this notice.

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 use 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.

The record was left open for a grace period of 15 minutes after the hearing start time to give Mr. Metto a *reasonable* opportunity to participate. Allowing additional time would prejudice the non-appealing party for appearing in a timely manner. Holding Mr. Metto in default for not appearing and participating during a 15-minute window after the hearing start time is reasonable considering the time allocated for each unemployment hearing. Allowing this additional time period is more than reasonable under the circumstances.

The unemployment insurance decision had concluded that Mr. Metto was not eligible for UI benefits as of July 12, 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 judgment. 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. Mr. Metto was not present at the start of the hearing. As a *courtesy*, Mr. Metto was granted additional time not required by statute or rule. The representative's decision remains in force and effect.

Even though Mr. Metto is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive up to the \$600 weekly benefit

amount under the Federal Pandemic Unemployment Compensation (FPUC) program if they are eligible.

**DECISION:**

The October 19, 2020, (reference 01) unemployment insurance decision denying benefits remains in effect as Mr. Metto is in default and the appeal is dismissed.



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

November 3, 2021  
Decision Dated and Mailed

dz/ja

**NOTE TO MR. METTO:**

- 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 you were unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA) benefits. **You must apply for PUA benefits 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, you may be required to repay the benefits you've received so far.**
- Governor Reynolds ended Iowa's participation in federal pandemic-related unemployment benefit programs, including the PUA program, effective June 12, 2021. **You can still apply for PUA benefits at the link above if your initial claim for benefits was filed before June 12, 2021.** Your initial claim for benefits was filed on July 12, 2020.