

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
Division of Administrative Hearings  
Wallace State Office Building  
Des Moines, Iowa 50319

**Appeal Number: 15IWDUI121**  
**OC: 3/23/15**  
**Claimant: Appellant (6)**

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>TH</sup> Floor Lucas Building, Des Moines, Iowa 50319.**

**ROBERT L. READUS**  
**1611 CRESCENT**  
**IOWA CITY, IOWA 52240**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

**IOWA WORKFORCE DEVELOPMENT**  
**1000 EAST GRAND AVENUE**  
**DES MOINES IA 50319-0209**

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

JONI BENSON, IWD  
RONEE SLAGE, IWD

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to the department. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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May 4, 2015  
(Decision Dated & Mailed)

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Iowa Code section 17A.12(3) – Default  
871 Iowa Administrative Code 26.14(6)-(7) – Failure to Appear

**STATEMENT OF THE CASE:**

Appellant Robert Readus filed an appeal of a decision issued by Iowa Workforce Development (the Department) dated March 23, 2015 (reference 01). A Notice of Telephone Hearing was mailed to all parties on April 3, 2015 setting a hearing date of May 1, 2015 at 1:00 p.m. The notice contained instructions regarding how to participate in the telephone hearing. Neither the Appellant nor any representative from the Department called in to participate in the hearing at the date and time indicated.

**ISSUE:**

Should the appeal be dismissed based upon the Appellant and the Respondent not participating in the hearing?

**FINDINGS OF FACT:**

The parties were properly notified of the scheduled hearing on this appeal. Neither party participated in the hearing as required by the hearing notice. The challenge for the administrative law judge when neither party appears for a contested case hearing is that the administrative file is typically not sufficient, without testimony from either the Appellant or the Department, to review. A contested case hearing is designed to flesh out both the reasoning of the Department in making the decision and the Appellant's justification for appeal. The task of the administrative law judge is to determine, after careful consideration of the evidence available, whether the Department's decision under appeal was correct. This task is rendered nearly impossible when neither party appears for hearing. Additionally, it seems an incredible waste of judicial resources to issue lengthy decisions on the merits in cases where neither party has enough investment in the outcome to appear at the contested case hearing and support its position.

**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. 871-26.14(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 provided in Iowa Code section 17A.12(3). The record may be reopened if the absent party makes a request 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. Instead, the presiding officer shall inquire ex parte as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

The Appellant appealed the representative's decision but failed to participate in the hearing. The Appellant has therefore defaulted on his 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.

If the Appellant disagrees with this decision, pursuant to the rule, the Appellant must make a written request to the administrative law judge that the hearing be reopened within 15 days after the mailing date of this decision. The written request should be mailed to the administrative law judge at the address listed at the end of this decision and must explain the emergency or other good cause that prevented the Appellant from participating in the hearing at its scheduled time.

### **DECISION:**

The Appellant's appeal is dismissed

kmd