

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GILBERTO M VALENCIA
Claimant

APPEAL 22A-UI-10050-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KING KNUTSON CONSTRUCTION INC
Employer

**OC: 09/12/21
Claimant: Respondent (6)**

Iowa Code § 96.6(2) – Timeliness of Employer Protest
Iowa Code § 96.7(2)a(6) – Statement of Charges
Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the February 9, 2022 statement of charges that listed charge information for claimant during the fourth quarter of 2021. A notice of hearing was mailed to the employer's last known address of record for a telephone hearing scheduled for May 20, 2022. A review of the Appeals Bureau's conference call system indicates that the appellant failed to respond to the hearing notice and call in to participate in the scheduled hearing. Because the employer/appellant failed to follow the instructions on the notice of hearing, no hearing was held.

ISSUE:

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

FINDINGS OF FACT:

The employer was properly notified of the scheduled hearing for this appeal. The appellant failed to call in to participate in the scheduled hearing, as required by the hearing notice. The appellant did not request a postponement of the hearing before the hearing date. Official notice of the Clear2there hearing control screen is taken to establish that appellant did not call or register online with the Appeals Bureau to participate in the hearing at the date and time the hearing was scheduled. The appellant did not call in before the record was closed, 15 minutes after the initial hearing was scheduled to begin.

The hearing notice instruction specifically advises parties in English and Spanish:

IMPORTANT NOTICE!

YOU MUST CALL the toll-free number: 866-783-7021 at the time of 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 hearing notice lists the hearing date of **FRI MAY 20, 2022**. The back page of the hearing notice provides further warning stating you must call the toll-free number on the front of this notice at the time of the hearing to participate.

The record was left open for a grace period of 15 minutes after the initial hearing start time to give the appellant a *reasonable* opportunity to participate. The 15-minute wait time is a reasonable period to hold the record open as insufficient time would remain to conduct a quality due process hearing in the time allotted by the Appeals Bureau. Each two-party hearing is allowed 60 minutes and a one-party hearing allowed 30 minutes. Holding the appellant in default for failure to appear and participate during a 15-minute window after the hearing start time is entirely reasonable considering the time allocated for unemployment hearings. The statement of charges dated February 9, 2022 listed charge information for the fourth quarter of 2021.

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.

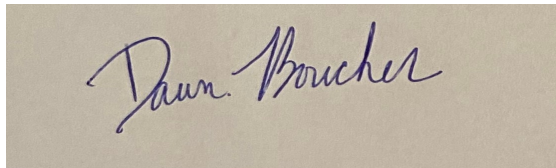
c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

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 call the toll-free number on the front of the notice at the time of the hearing to participate.

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. The appellant was not present at the start of the hearing. As a *courtesy*, appellant was granted additional time not required by statute or rule. The statement of charges remains in force and effect.

DECISION:

The February 9, 2022 statement of charges for the fourth quarter of 2021 remains in effect as the appellant is in default and the appeal is dismissed.



Dawn Boucher
Administrative Law Judge
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Fax (515) 478-3528

May 31, 2022
Decision Dated and Mailed

db/db