

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALYISHA SMITH
Claimant

GENESIS HEALTH SYSTEM
Employer

APPEAL 20A-UI-15549-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/14/20
Claimant: Appellant (6)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

Alyisha Smith, the claimant/appellant, filed an appeal from the October 30, 2020, (reference 04) unemployment insurance decision that concluded she was not eligible for unemployment insurance benefits. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for January 26, 2021. A review of the Appeals Bureau's conference call system indicates that Ms. Smith responded at the telephone number she provided at the time the hearing was scheduled to begin but was disconnected from the call and did not respond to the administrative law judge's voice messages. The employer's representative was present and prepared to proceed with the hearing as scheduled. Because Ms. Smith failed to make herself available via the telephone number she provided at the time and date scheduled for her appeal hearing, no hearing was held.

ISSUE:

Should the appeal be dismissed based on Ms. Smith's failure to appear and participate?

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing for this appeal. Ms. Smith failed to make herself available via the telephone number she provided at the time and date scheduled for her appeal hearing. She was not available at the telephone number she provided for the scheduled hearing as required by the hearing notice. She did not request a postponement of the hearing. No hearing was held.

The hearing notice instruction specifically 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 January 26, 2021 and the hearing time as 9:00 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 Ms. Smith a *reasonable* opportunity to participate. Allowing additional time would prejudice the non-appealing party for appearing in a timely manner. Holding Ms. Smith in default for failure to appear and participate 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 Ms. Smith was not eligible for unemployment insurance benefits.

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. Ms. Smith failed to make herself available the time and date scheduled for her appeal hearing. As a *courtesy*, Ms. Smith was granted additional time not required by statute or rule. The representative's decision remains in force and effect.

Pursuant to the rule, Ms. Smith may make a written request to the administrative law judge that the hearing be reopened, but must do so 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 her from participating in the hearing at its scheduled time. Ms. Smith also has the option to appeal the decision directly to the Employment Appeal Board, whose address is listed at the top right caption.

DECISION:

The October 30, 2020, (reference 04) unemployment insurance decision denying benefits remains in effect as Ms. Smith is in default and the appeal is dismissed.



Daniel Zeno
Administrative Law Judge
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Iowa Workforce Development
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Des Moines, Iowa 50319-0209
Fax 515-478-3528

February 11, 2021
Decision Dated and Mailed

dz/ol