

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CATALINO V OCHOA SOTO
Claimant

WELLS ENTERPRISES INC
Employer

APPEAL NO: 21A-UI-03049-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/20/20
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

STATEMENT OF THE CASE:

The claimant, Catalino Ochoa Soto, filed a timely appeal from the January 7, 2021, reference 01, decision that disqualified him for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant was discharged on September 4, 2020 for fighting on the job. A notice of hearing was mailed to the parties' last-known addresses of record for a telephone hearing to be held at 3:00 p.m. on March 15, 2021. The employer registered a telephone number for the hearing and was available through Stacy Roupe. The claimant/appellant, Mr. Ochoa Soto, registered a telephone number for the hearing, but was not available at that number at the time of the hearing. Spanish-English interpreter Jose Santana (#11973) of CTS Language Link was available to assist with the 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.

ISSUE:

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

FINDINGS OF FACT:

The claimant, Mr. Ochoa Soto, is the appellant in this matter. The claimant was properly notified of the appeal hearing set for 3:00 p.m. on March 15, 2021 through the hearing notice that was mailed to his last-known address of record on February 23, 2021. The claimant did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. The claimant registered a telephone number for the hearing, but was not available at that number at the time of the hearing. The administrative law judge made two attempts to reach the claimant at the registered number. On each attempt, no one answered and the call was eventually routed to voicemail. On each attempt, the administrative law judge left an appropriate message with the assistance of the interpreter.

The January 7, 2021, reference 01, decision disqualified the claimant for benefits and held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant was discharged on September 4, 2020 for fighting on the job.

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 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.

DECISION:

The claimant defaulted on his appeal. The appeal is dismissed. The January 7, 2021, reference 01, decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant was discharged on September 4, 2020 for fighting on the job, remains in effect.



James E. Timberland
Administrative Law Judge
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Iowa Workforce Development
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Des Moines, Iowa 50319-0209
Fax 515-478-3528

March 16, 2021
Decision Dated and Mailed

jet/scn

NOTE TO CLAIMANT:

- 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 are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA 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 for the affected period, you will be required to repay the benefits you have received.**