

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CHRISTOPHER L MAXWELL
Claimant

KELLY SERVICES INC
Employer

APPEAL 20A-UI-06279-CL-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 05/17/20
Claimant: Respondent (6)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview
PL 116-136, Sec. 2104(b) – Federal Pandemic Unemployment Compensation
Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

Employer filed an appeal from the June 10, 2020, (reference 01) unemployment insurance decision that concluded claimant was eligible for unemployment insurance benefits. Iowa Workforce Development mailed a hearing notice to the claimant and employer for a telephone hearing scheduled for July 16, 2020, at 9:00 a.m. Employer did not answer at the number provided to the Appeals Bureau prior to the hearing so no hearing was held. The administrative law judge took official notice of the hearing control screen which shows employer did not answer at the telephone number provided prior to the time of the hearing.

ISSUE:

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

FINDINGS OF FACT:

The claimant and employer were properly notified of the scheduled hearing for this appeal. The employer did not answer at the telephone number provided to the Appeals Bureau for the scheduled hearing. Employer did not request a postponement of the hearing.

The hearing notice instruction specifically advises parties of the date and time of the hearing. It also states:

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. You must also provide the name(s) and phone number(s) of any witnesses to the Appeals Bureau.

The back page of the hearing notice provides further instruction and warning:

Failure to Participate or Register for Appeal Hearing

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 us 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. 871 IAC 26.14(7).

The information quoted above also appears on the hearing notice in Spanish.

The administrative law judge held the record open for 15 minutes past the scheduled start time to allow the employer a reasonable opportunity to participate. However, employer did not contact the Appeals Bureau to participate during that time frame.

The unemployment insurance decision appealed by employer concluded that the claimant was eligible for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedure Act at Iowa Code § 17A.12(3) states that if a party fails to appear for or participate in a hearing after being properly notified, the judge may enter a default decision or proceed with the hearing and make a decision in the absence of the party.

Iowa Admin. Code r. 871-26.14(7) provides, in relevant part:

(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).

In this case, the employer was not available for the hearing at the telephone number it provided to the Appeals Bureau. Therefore, the employer is in default and the appeal is dismissed.

If the employer disagrees with this decision, the employer may appeal the decision directly to the Employment Appeal Board, whose address is listed at the top right caption.

DECISION:

The June 10, 2020, (reference 01) unemployment insurance decision allowing benefits remains in effect, as the appellant is in default and the appeal is dismissed.



Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

July 24, 2020
Decision Dated and Mailed

cal/sam