

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

**DECISION OF THE ADMINISTRATIVE LAW  
JUDGE**

**ESPOIR BYAMUNGU**  
**5055 Johnson Avenue SW Apt. 15**  
**Cedar Rapids, IA 52404**

**IOWA WORKFORCE DEVELOPMENT**  
**KENDRA MILLS, IWD**  
**JONI BENSON, IWD**  
**JODI DOUGLAS, IWD**  
**NICHOLAS OLIVENCIA, IWD**  
**EMILY CHAFA, UI APPEALS MANAGER**

**Appeal Number: 17IWDUI239**  
**OC: 12/20/15**  
**Claimant: Appellant (6)**

**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.*

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

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.

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)

March 31, 2017

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(Decision Dated & Mailed)

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Iowa Code § 17A.12(3) – Default Decision  
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

**STATEMENT OF THE CASE and FINDINGS OF FACT**

Byamungu Espoir (“Espoir”) filed an appeal from an Iowa Workforce Development (“IWD”) unemployment insurance decision dated January 30, 2017 (Ref. No. 7). A Notice of Hearing was issued scheduling this matter for hearing on March 31, 2017. At the time of the hearing, a representative of IWD appeared; however, Espoir failed to appear. IWD moved for a default decision.

**ISSUE**

Should the appeal be dismissed based upon Espoir not participating in the hearing?

## **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.

IWD's administrative rules likewise 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.

871 Iowa Administrative Code ("I.A.C.") § 26.14(7).

Espoir appealed IWD's decision but failed to participate in the hearing. Espoir has, therefore, defaulted on the appeal pursuant to Iowa Code §17A.12(3) and 441 I.A.C. § 26.14(7). IWD's decision is AFFIRMED and remains in force and effect. If Espoir disagrees with this decision, pursuant to the rule, Espoir 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 with this decision and must explain the emergency or other good cause that prevented Espoir from participating in the hearing at its scheduled time.

### **DECISION**

IWD's decision in this matter is AFFIRMED and remains in effect. IWD shall take any action necessary to implement this decision.

JMG