

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ABIGAE S STALEY

Claimant

APPEAL NO: 20A-UI-02085-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES

Employer

OC: 02/16/20

Claimant: Appellant (6)

Iowa Code § 96.5(2)(a) – Discharge
Iowa Code § 96.3(7) – Recovery of Overpayment
Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

Abigael Staley filed a timely appeal from the March 2, 2020, reference 01, decision that held she was disqualified for benefits and the employer's account would not be charged for benefits, based on the deputy's conclusion that Ms. Staley was discharged on 2/12/20 for misconduct in connection with the employment. 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 April 20, 2020. The employer registered a telephone number for the hearing and was available through Dena Shelton of Equifax and witnesses Kellie Jimerson and Diana Scarf. At the time of the hearing, Ms. Staley was not available at the telephone number she registered for the appeal 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.

ISSUES:

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

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant, Abigael Staley, is the appellant in this matter. The claimant was properly notified of the appeal hearing set for 3:00 p.m. on April 20, 2020 through the hearing notice that was mailed to her last-known address of record on March 23, 2020. The claimant did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. The appeal hearing was initially set for hearing on March 24, 2020, but had to be postponed due to the COVID-19 pandemic. On March 24, 2020, Ms. Staley registered a telephone number for the hearing that was set for that day. Ms. Staley did not thereafter update her telephone number. On April 20, 2020, that administrative law judge made two attempts to reach Ms. Staley at the number she had registered on March 24, 2020. On each attempt, the administrative law judge

stayed on the line and extended time before the call was routed to a voicemail box where the administrative law judge left an appropriate message. At 3:15 p.m., in the absence of a response or other contact from Ms. Staley, the administrative law judge excused the employer and closed the hearing record.

The March 2, 2020, reference 01, decision held the claimant was disqualified for benefits and the employer's account would not be charged for benefits, based on the deputy's conclusion that Ms. Staley was discharged on 2/12/20 for misconduct in connection with the employment.

Despite the denial of benefits at initial fact-finding, Iowa Workforce Development released funds to claimants while their appeals were pending due to the backlog in appeals caused by the recent COVID 19 outbreak. Claimant was one of the individuals whose funds were released pending appeal. The administrative record shows, claimant filed for and received a total of \$494.00 in unemployment insurance benefits for the two weeks between February 16, 2020 and February 29, 2020.

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:

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. 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 representative's decision remains in force and effect.

The claimant defaulted on her appeal by failing to participate in the appeal hearing and by failing to provide good cause for her failure to participate.

Because the claimant has been receiving benefits pending adjudication of her appeal, the next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

Iowa Code § 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.
 - a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

Since the decision disqualifying the claimant has been affirmed, the claimant was overpaid \$494.00 in unemployment insurance benefits for the two weeks between February 16, 2020 and February 29, 2020. The claimant must repay overpaid benefits.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic

Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

DECISION:

The claimant defaulted on her appeal. The appeal is dismissed. The March 2, 2020, reference 01, decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on February 12, 2020 discharge, remains in effect. The claimant was overpaid \$494.00 in unemployment insurance benefits for the two weeks between February 16, 2020 and February 29, 2020. The claimant must repay the overpaid benefits.



James E. Timberland
Administrative Law Judge

April 21, 2020
Decision Dated and Mailed

jet/scn