

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CARLOS R MENDOZA
Claimant

QUIKTRIP CORP
Employer

APPEAL 23A-UI-07825-DZ

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/16/23
Claimant: Appellant (6)**

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 17A.12(3) – Default Decision

STATEMENT OF THE CASE:

Carlos R. Mendoza, the claimant/appellant,¹ appealed the Iowa Workforce Development (IWD) August 2, 2023 (reference 01) unemployment insurance (UI) decision. The decision denied Mr. Mendoza REGULAR (state) UI benefits because IWD concluded that he voluntarily quit on July 8, 2023 for personal reasons and his quitting was not caused by the employer. On August 16, 2023 the Iowa Department of Inspections, Appeals, and Licensing, UI Appeals Bureau mailed a notice of hearing to Mr. Mendoza and the employer at each of their last known addresses of record for an in-person hearing scheduled for August 29, 2023 at the Wallace State Office Building, 502 East 9th Street, Des Moines IA 50319.

Mr. Mendoza did not come to the address listed on the hearing notice at the time the hearing was scheduled to begin. The employer did not come to the address listed on the hearing notice at the time the hearing was scheduled to begin. Because Mr. Mendoza filed the appeal but did not come to the address listed on the hearing notice, the undersigned administrative law judge did not hold a hearing.

ISSUE:

Should Mr. Mendoza's appeal be dismissed based on him not appearing and participating in the appeal hearing?

FINDINGS OF FACT:

The DIAL UI Appeals Bureau properly notified the parties of the scheduled hearing for this appeal. Mr. Mendoza did not come to the address listed on the hearing notice at the time scheduled for this appeal hearing. He did not request a postponement of the hearing before the hearing date. He did not come to the address listed on the hearing notice before the record was closed 30 minutes after the hearing was scheduled to begin. The undersigned did not hold a hearing.

¹ Claimant is the person who filed the UI claim with IWD. Appellant is the person or employer who filed the appeal.

The hearing notice lists the hearing date of August 29, 2023, and the hearing time as 10:30 a.m. Iowa time. The hearing notice also advises parties:

IMPORTANT NOTICE!

When you arrive at the hearing location, do not wait in line. You should immediately ask workforce center staff where to go for the hearing. On the scheduled date, you must be present at the location identified above and ready to participate in the hearing at the scheduled time. If you or one of your witnesses needs an interpreter, you should notify the Appeals Bureau immediately so that the Appeals Bureau can arrange an interpreter for the hearing.

The undersigned left the record open for a grace period of 30 minutes after the hearing start time, per guidance from the United States Department of Labor (DOL), to give Mr. Mendoza a reasonable opportunity to participate. This reasonable amount of time is appropriate because if a hearing were conducted with the non-appealing party alone it would have likely concluded in 30 minutes or less. Holding Mr. Mendoza in default for not appearing and participating during a 30-minute window after the hearing start time is reasonable considering the time allocated for each appeal hearing. Allowing this additional time period is reasonable under the circumstances.

The UI decision concluded that Mr. Mendoza is not eligible for REGULAR (state) UI benefits because IWD concluded that he voluntarily quit on July 8, 2023 for personal reasons and his quitting was not caused by the employer.

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 Admin. Code r. 26.14(7) provides:

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.² The hearing notice instructs the parties to call the toll-free number listed on hearing notice at the time the hearing is scheduled to begin.

The Iowa Supreme Court has held a default should not be set aside due to the appellant's negligence, carelessness, or inattention.³ 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 did not appear because of some misunderstanding, accident, mistake or excusable neglect.

Mr. Mendoza was not present at the start of the hearing. Per DOL guidance, the undersigned gave Mr. Mendoza additional time to call-in to allow for any misunderstandings or mistakes. But he did not call in for the hearing during the additional time allotted. Mr. Mendoza is in default, his appeal is dismissed, and the IWD UI decision remains in force and effect.

² Iowa Code § 17A.12(3) and Iowa Admin. Code r. 26.14(7).

³ See *Houlihan v. Emp't Appeal Bd.*, 545 N.W.2d 863 (Iowa 1996).

DECISION:

The August 2, 2023 (reference 01) UI decision denying Mr. Mendoza REGULAR (state) UI benefits remains in effect as he is in default and his appeal is DISMISSED.



Daniel Zeno
Administrative Law Judge

August 30, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to **file a petition for judicial review in District Court** within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de **presentar una petición de revisión judicial en el Tribunal de Distrito** dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.