

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

ROBIN W ESTES
Claimant

EXPRESS SERVICES INC
Employer

APPEAL 22A-UI-17505-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/28/22
Claimant: Respondent (6)

Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment
Iowa Code § 17A.12(3) – Default Decision
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

The claimant, Express Services Inc., filed an appeal from the September 20, 2022, (reference 01) unemployment insurance decision that denied benefits based upon his voluntary quit for failing to report to work for three days in a row without notifying the employer. The parties were properly notified of the hearing.

A telephone hearing was held on October 20, 2022 at 1:00 p.m. A review of the Appeals Bureau's conference call system indicates that the registered Owner Pam Myers for the hearing. The administrative law judge asked Ms. Myers to use a direct number in the future. Ms. Myers told the administrative law judge she did register a direct number. The administrative law judge reminded Ms. Myers that he had just been placed on a brief hold to connect with her. Ms. Myers then criticized the means in which the administrative law judge identified himself and suggested he inform her he works for an entity that no longer exists. Ms. Myers then said he could go on with the hearing without her opining she had never been treated so poorly in her life. The administrative law judge did not immediately recognize Ms. Myer's disconnected the call. He called Ms. Myer's twice. When Ms. Myers was reconnected, she informed the administrative law judge that no further participation was necessary because her third-party servicer told her that was the case. The administrative law judge clarified that the employer was the appellant and Ms. Myers refusal to participate would result in a default judgement.

ISSUE:

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

FINDINGS OF FACT:

The appellant was properly notified of the scheduled hearing for this appeal. The appellant registered a witness for the hearing that had no interest in participating. The appellant did not request a postponement of the hearing before the hearing date. Official notice of the Clear2there hearing control screen is taken to establish that appellant did not call or register

online with the Appeals Bureau to participate in the hearing at the date and time the hearing was scheduled. The appellant refused to participate at the time of the hearing.

The hearing notice instruction specifically advises parties as follows:

IMPORTANT NOTICE!

YOU MUST CALL the toll-free number: 866-783-7021 at the time of the hearing. When instructed, enter the PIN Number ... followed by the pound key [#] and wait for the administrative law judge to begin the hearing. The administrative law judge **WILL NOT** call you for the hearing, you **MUST** call into the number provided above to participate. **Failure to participate in the hearing may result in the dismissal of your appeal.**

The hearing notice lists the hearing date and time. The back page of the hearing notice provides further warning stating "You must call the toll-free number on the front of this notice at the time of the hearing to participate."

The record was left open for a period after the initial hearing start time to give the appellant a *reasonable* opportunity to participate. Holding the appellant in default for failure to appear and participate during the grace period after the hearing start time is entirely reasonable considering the time allocated for unemployment hearings.

The September 20, 2022 (reference 01) decision granted benefits based on the conclusion he requested an assignment within three working days of his last assignment ending.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedures Act at Iowa Code § 17A.12(3) provides that if a party fails to appear or participate in a hearing after proper service of notice, the judge may enter a default decision or proceed with the hearing and make a decision in the absence of the party.

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.

Iowa Admin. Code r. 26.14(7) provides in pertinent part:

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.

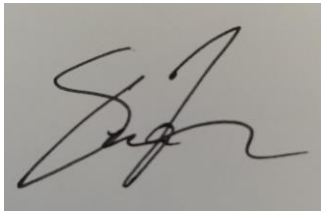
Due process requires notice and an opportunity to be heard, both of which were provided to the parties. The appellant is responsible for going forward with the case in a prompt and thoughtful manner. The appellant must be present at the start of the hearing to avoid a default judgment. Iowa Code § 17A.12(3) and Iowa Admin. Code r. 26.14(7). The hearing notice instructs the parties to call the toll-free number on the front of the notice at the time of the hearing to participate.

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 or during the grace period prior to the record being closed. The representative's decision remains in force and effect.

Ms. Myers registered for an appeal hearing, but at the time of the hearing she refused to participate. Without a witness for the employer, the appellant in this case is in default.

DECISION:

The September 20, 2022 (reference 01) unemployment insurance decision granting benefits remains in effect as the appellant is in default and the appeal is DISMISSED.



Sean M. Nelson
Administrative Law Judge II
Iowa Department of Inspections & Appeals
Administrative Hearings Division – UI Appeals Bureau

October 24, 2022
Decision Dated and Mailed

smn/mh

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 adquiriera 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.