

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOANNA M HORTON
Claimant

MUELLER SERVICES INC
Employer

APPEAL 21A-UI-01071-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Respondent (6)

Iowa Code § 96.6(2) – Timeliness of Protest
Iowa Code § 96.7(2)a(6) – Appeal from the Statement of Charges
Iowa Admin. Code r. 871-23.43(9)a – Combined Wage Claim Relief of Charges
Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

The employer filed an appeal from the November 9, 2020, statement of charges which listed charge information through September 30, 2020. The parties were properly notified of the hearing. A hearing was scheduled for February 17, 2021, at 8:00 a.m. A review of the Appeals Bureau's conference call system indicates that the employer did not answer at the number it provided for the hearing and no hearing was held.

ISSUE:

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

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing for this appeal. The appellant failed to answer at the telephone number it provided for the hearing and did not participate or request a postponement of the hearing as required by the hearing notice. Official notice of the Clear2there hearing control screen is taken to establish that appellant did not answer at the telephone number it provided for 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.

As a courtesy to the appellant the record was left open for a minimum of 15 minutes after the hearing start time to give the appellant 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 15 minutes or less. Allowing additional time would prejudice the non-appealing party for appearing in a timely manner.

The statement of charges included charges for claimant's unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedure 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 Admin. Code r. 871-26.14(7) provides:

(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). The record may be reopened if the absent party makes a request to reopen the hearing in writing 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.

In this case, the appellant did not provide a telephone number to the Appeals Bureau where it could be reached for the hearing. Therefore, no hearing was held and the appeal was dismissed. If the appellant disagrees with this decision, it can appeal directly to the Employment Appeal Board, whose address is listed at the top right caption.

DECISION:

The November 9, 2020, statement of charges for the third quarter of 2020 remains in effect as the appellant is in default and the appeal is dismissed.



Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Des Moines, Iowa 50319-0209
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February 26, 2021
Decision Dated and Mailed

cal/scn