

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

ABELARDO MERO-BUSTOS
Claimant

PACKERS SANITATION SERVICES INC
Employer

APPEAL 24A-UI-02400-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/14/24
Claimant: Respondent (6)

Iowa Code § 96.6(2) – Timeliness of Protest
Iowa Code § 17A.12(3) – Default Decision

STATEMENT OF THE CASE:

The employer filed a late appeal from the Iowa Workforce Development (IWD) February 12, 2024 (reference 03) decision that allowed benefits to the claimant, provide he was otherwise eligible, and that held the employer's account could be charged for benefits, based on the deputy's conclusion the employer's protest was untimely. On March 7, 2024, Iowa Department of Inspections, Appeals, and Licensing (DIAL) UI Appeals Bureau mailed a notice of hearing to the parties at their last known address of record for a telephone hearing set for 1:00 p.m. on March 26, 2024. Abelardo Mero-Bustos (claimant) did not comply with the hearing notice instructions to call the designated toll-free number for the hearing and did not participate. A PSSI supervisor, Alejandra Torres, called the designated number at the time of the hearing, but advised she had no information regarding this claimant and was unable to go forward with the hearing. The employer did not participate in the hearing. Based on the employer's failure to participate in the hearing, the administrative law judge did not hold a hearing.

ISSUE:

Whether the appeal should be dismissed based on the employer/appellant's failure to appear for and participate in the appeal hearing.

FINDINGS OF FACT:

The employer is the appellant in this matter. DIAL UI Appeals Bureau properly notified the employer of the scheduled appeal hearing. The administrative law judge was available for the hearing as scheduled. At the time of the hearing, a PSSI supervisor, Alejandra Torres called the hearing conference phone number, but advised she had not information regarding claimant Abelardo MeroBustos and was unable to go forward with the hearing. Ms. Torres stated that she had been instructed by her company to call in at the hearing time (1:00 p.m.) regarding a different claimant., Trenton Geromini). The administrative law judge explained that the hearing concerning Mr. Geromini was set for 2:00 p.m. The administrative law judge granted the employer until 1:15 p.m. to produce a representative prepared to go forward with the hearing. Ms. Torres left the hearing at 1:09 p.m. with that understanding. When no one appeared by

1:16 p.m., the administrative law judge closed the hearing record. The administrative law judge did not hold a hearing because the employer did not produce a representative to go forward with the hearing. The employer had not requested a postponement of the hearing.

The Iowa Workforce Development (IWD) February 12, 2024 (reference 03) decision allowed benefits to the claimant, provide he was otherwise eligible, and held the employer's account could be charged for benefits, based on the deputy's conclusion the employer's protest was untimely.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedures Act at Iowa Code § 17A.12(3) provides, in relevant 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 provided 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 party/parties. The appellant is responsible for going forward with the case in a prompt and thoughtful manner. The hearing notice instructs the party/parties to call the toll-free number

listed on hearing notice at the time the hearing is scheduled to begin. The appellant must be present at the start of the hearing to avoid a default judgment.

The employer/appellant did not call in for the hearing and is in default. The appeal is dismissed. The IWD unemployment insurance decision remains in effect.

DECISION:

The employer defaulted on the appeal. The appeal is DISMISSED. The Iowa Workforce Development (IWD) February 12, 2024 (reference 03) decision that allowed benefits to the claimant, provide he was otherwise eligible, and that held the employer's account could be charged for benefits, based on the deputy's conclusion the employer's protest was untimely, remains in effect.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light-colored background.

James E. Timberland
Administrative Law Judge

March 29, 2024
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
6200 Park Ave Suite 100
Des Moines, Iowa 50321
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>.

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
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: 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 está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

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.