

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MELSON PETER
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 21A-UI-24672-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (6)

Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant, Melson Peter, filed an appeal from the September 3, 2020, (reference 01) unemployment insurance decision that denied benefits based upon the conclusion he was discharged for excessive absenteeism. The parties were properly notified of the hearing.

The claimant registered for the hearing scheduled for January 5, 2022 at 9:00 a.m. The hearing was scheduled to be held jointly with appeal 21A-UI-24673-SN-T and 21A-UI-24674-SN-T. His wife, Reselina Torres, was also on the line. Prior to the start of taking testimony, the claimant informed the administrative law judge that he speaks Pohnpeian, a rare language spoken in Micronesia. Iowa Workforce Development Department uses a service called CTS Language Link for interpretation services. Iowa Workforce Development Department's contract does not allow its agents to preschedule an interpreter in advance. The administrative law judge could not secure a Pohnpeian interpreter. Mr. Peter said he did not speak any other Micronesian dialects. He said the only person he knew of that he trusted to interpret in Pohnpeian was Tyson's interpreter. The administrative law judge informed Mr. Peter that interpreter could not be used because they would have a conflict of interest. He informed Mr. Peter that the hearing would be postponed to his next available time.

The hearing rescheduled to occur on January 28, 2022 at 2:00 p.m. On that date, the claimant and Ms. Torres answered the call from the administrative law judge at the time of the hearing. A Pohnpeian interpreter was not available at that time. The administrative law judge informed the claimant and Ms. Torres that he did not have other hearings that afternoon, so he would try to secure one every 30 minutes and then call him back if he secured one. At 4:32 p.m., the administrative law judge secured a Pohnpeian interpreter, Sue (last name unknown). The claimant did not answer the phone at that time. Sue gave the administrative law judge her identification number #10262 and encouraged him to schedule the next hearing at 4:30 p.m. because that is when she begins her shift. Sue is CTS Language Link's sole Pohnpeian interpreter who is certified to conduct hearings. The administrative law judge did not issue a default decision because so much time had passed from the time of the notice of hearing.

The hearing was rescheduled to occur on February 16, 2022 at 4:30 p.m. The claimant answered the call of the administrative law judge at the time of the hearing. A Pohnpeian interpreter was not available at that time. The administrative law judge informed the claimant that he would postpone to the next date at 4:30 p.m. He added that he would call in intervals of 15 to 30 minutes to secure a Pohnpeian interpreter if the first attempt was not successful. Mr. Peter said he understood the administrative law judge. The administrative law judge informed Mr. Peter he would not make additional attempts on February 16, 2022 because the hearing notice had not been sent to the parties at least ten days prior to the hearing date and the employer was not present to waive that defect.

The hearing was rescheduled to occur on March 8, 2022 at 4:30 p.m. The administrative law judge called the claimant at 4:33 p.m. The administrative law judge called the claimant again at 5:01 p.m. A review of the Appeals Bureau's conference call system indicates that the appellant failed to answer either of those calls. No hearing was held.

ISSUE:

Whether the appeal should be dismissed based on the appellant's failure to appear and participate.

FINDINGS OF FACT:

The administrative law judge makes the following findings of fact:

The parties were properly notified of the scheduled hearing for this appeal. The appellant failed to answer the phone at the time of the hearing on March 8, 2022 at 4:33 p.m. or at 5:01 p.m. The appellant 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 those calls.

The hearing notice instruction specifically advises parties of the date and time of hearing. It also states:

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 back page of the hearing notice provides further hearing instructions stating, "You must call the toll-free number on the front of this notice at the time of the hearing to participate." This information also appears on the hearing notice in Spanish.

An insert was sent along with the hearing notice stating:

ATTENTION!

Instructions for participating in a hearing have changed.

Please review the enclosed hearing notice carefully and follow the instructions on how to join the call on the scheduled day and time of the hearing.

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. Holding the appellant in default for failure to appear and participate during a 15-minute window after the hearing start time is reasonable considering the time allocated for unemployment hearings.

The representative's decision concluded that the claimant had been terminated for excessive absenteeism.

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.

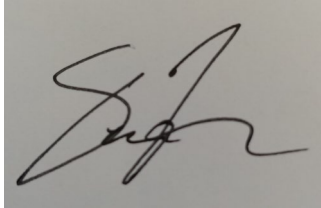
Iowa Admin. Code r. 871-26.14(7) provides:

(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 provided 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.

On March 8, 2022, the appellant did not answer at the phone he had previously registered for the hearing scheduled for January 5, 2022. While the administrative law judge acknowledges that the claimant may be discouraged by the number of postponements, he still needs to answer his phone on the date and time of the hearing.

DECISION:

The September 3, 2020, (reference 01) unemployment insurance decision denying benefits remains in effect as the appellant is in default and the appeal is dismissed.

A handwritten signature in black ink on a light gray background. The signature is stylized and appears to read 'S. Nelson'.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

March 24, 2022
Decision Dated and Mailed

smn/scn