

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

---

**ALLISON M STOLLFUSS  
2073 JACKSON ST  
DUBUQUE IA 52001 3520**

**SCHIEFFER CO INTERNATIONAL LC  
KIM LOHBERG  
9866 KAPP CT  
PEOSTA IA 52068**

**APPEAL 23R-UI-03404-CS-T  
ADMINISTRATIVE LAW JUDGE  
DECISION**

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

---

**ALLISON M STOLLFUSS**  
Claimant

**APPEAL 23R-UI-03404-CS-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SCHIEFFER CO INTERNATIONAL LC**  
Employer

**OC: 01/01/23  
Claimant: Respondent (2)**

---

Iowa Code §96.5(2)a-Discharge/Misconduct  
Iowa Code §96.5(1)- Voluntary Quit  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview  
Iowa Code § 17A.12(3) – Default Decision  
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

**STATEMENT OF THE CASE:**

On January 31, 2023, the employer/appellant filed an appeal from the January 23, 2023 (reference 02) unemployment insurance decision that allowed benefits. A hearing was held on February 15, 2023, for appeal 23A-UI-00978-AR-T. Claimant did not participate in the hearing. Employer participated in the hearing. After the Administrative Law Judge issued a decision, the claimant appealed to the Employment Appeal Board (EAB). On March 30, 2023, the EAB remanded this matter for a new hearing due to the claimant's non-participation in the February 15, 2023 hearing.

After the EAB remanded, due notice was issued, a hearing was scheduled to be held on April 14, 2023. The claimant did not call in at the schedule time to participate in the hearing. The employer was present. Because the EAB did not vacate the original appeal decision for 23A-UI-00978-AR-T, that hearing record, including any exhibits, is adopted and incorporated herein. No additional exhibits were offered.

**ISSUE:**

Should the original appeal decision be adopted?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Inasmuch as the decision was not vacated as a result of the Employment Appeal Board remand, the administrative law judge's findings of fact in appeal 23A-UI-00978-AR-T is hereby adopted and incorporated herein as the findings of fact for appeal 23R-UI-03404-CS-T.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that inasmuch as the decision was not vacated as a result of the Employment Appeal Board remand, the administrative law judge's reasoning and conclusions of law in appeal 23A-UI-00978-AR-T is hereby adopted and incorporated herein as the reasoning and conclusions of law for appeal 23R-UI-00978-CS-T. Benefits are denied. The claimant has been overpaid benefits in the amount of \$3,306.00 and is obligated to repay the agency those benefits. The employer did participate in the fact-finding interview and its account shall not be charged.

The Agency rules at 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 judgement. Iowa Code § 17A.12(3) and Iowa Admin. Code r. 26.14(7).

The hearing notice instructs the parties to read the hearing notice and call the number listed for the hearing. If these instructions are not followed, the appealing 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 Iowa Supreme Court has held a default decision should be upheld when the absence of the appellant was 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 be upheld when the appellant has ignored clear requirements in the rules.

In this case, the employer/appellant was present for the hearing. The claimant was not present at the start of the hearing. As a courtesy to allow for any misunderstandings or mistakes, the claimant was granted additional time not required by statute or rule. However, the claimant did not call in for the hearing during the additional time allotted.

As the decision was not vacated as a result of the Employment Appeal Board remand, the administrative law judge's reasoning and conclusions of law in appeal 23A-UI-00978-AR-T is

hereby adopted and incorporated herein as the reasoning and conclusions of law for appeal 23R-UI-03404-CS-T. Benefits are denied. The claimant has been overpaid benefits in the amount of \$3,306.00 and is obligated to repay the agency those benefits. The employer did participate in the fact-finding interview and its account shall not be charged.

**DECISION:**

Inasmuch as the decision was not vacated as a result of the Employment Appeal Board remand, the administrative law judge's decision in appeal 23A-UI-00978-AR-T is hereby adopted and incorporated herein as the decision for appeal 23R-UI-03404-CS-T. The January 23, 2023 (reference 02) unemployment insurance decision is REVERSED. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

The claimant has been overpaid unemployment insurance benefits in the amount of \$3,306.00 and is obligated to repay the agency those benefits. The employer did participate in the fact-finding interview and its account shall not be charged.



---

Carly Smith  
Administrative Law Judge

April 17, 2023  
Decision Dated and Mailed

scn

**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  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://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](http://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.