IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

Jessica Williams Claimant **Walmart, Inc.** Employer	**DIA APPEAL NO. 22IWDUI0037** **IWD APPEAL NO. 21A-UI-19075** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 6/13/2021** **Claimant: Appellant (1)**

Iowa Code § 96.5(2) – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

The Claimant/Appellant, Jessica Williams, filed an appeal from the August 20, 2021, (reference 01) unemployment insurance decision that concluded Claimant was not eligible for unemployment insurance benefits. Notice of hearing was mailed to Claimant on October 6, 2021, scheduling a telephone hearing for October 18, 2021 at 8:30 a.m. The Claimant was instructed to call a toll-free conference number at the assigned time. Because the Claimant failed to follow the instructions on the notice of hearing, and was not available by calling in on the date and time scheduled for this appeal hearing, no hearing was held.

ISSUE:

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

FINDINGS OF FACT:

The Claimant was properly notified of the scheduled hearing for this appeal. The Claimant did not call into the conference call at the time scheduled for this appeal hearing as required by the hearing notice. The Claimant did not request a postponement of the hearing. No hearing was held.

The hearing notice instruction specifically advises parties:

> **DATE:** October 18, 2021
> **TIME:** 8:30 a.m. Central Time
> **ALJ:** Jonathan Gallagher (Email: jonathan.gallagher@dia.iowa.gov)
> **TOLL-FREE HEARING PHONE NUMBER: 1-888-570-3602**
>
> At the date and time of the hearing, all parties must call the toll-free hearing number listed above. Important additional instructions for participating in this hearing are on the next page of this Notice. Failure to appear and participate in the hearing may result in the entry of a default judgment.

The back page of the hearing notice provides further instruction and warning:

> **It is your responsibility to call in for the hearing. The judge will not call you. If you do not call using the above instructions, you will not be able to participate in the hearing. If you have technical difficulties connecting at the time of hearing, please call (515) 281-6468.**

The record was left open for a grace period of 15 minutes after the hearing start time to give the Claimant a reasonable opportunity to participate. Holding the Claimant 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 each unemployment hearing. Allowing this additional time period is more than reasonable under the circumstances. The unemployment insurance decision had concluded that the Claimant was not eligible for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedure Act at 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. ... 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.**

Agency rules at Iowa Admin. Code r. 26.14(7)(c) 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 § 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.
> c. **Failure to read or follow the instructions on the notice of hearing *shall not* constitute good cause for reopening the record.** (Emphasis added.)

The Iowa Supreme Court has opined that a default should not be set aside for ordinary negligence or want of ordinary care. Defaults should not be set aside where the movant ignores plain instruction with ample opportunity to comply. See *Houlihan v. Emp't Appeal Bd.*, 545 N.W.2d 863 (Iowa 1996).

Here the clear directive is to read the hearing notice and call in to the toll-free conference line at the set date and time. Further, if the party has issues connecting to the conference line, he or she may call the telephone number on the hearing notice. Due process requires notice and an opportunity to be heard, both of which were provided to each party. *The rule does not provide exceptions for good intentions and/or a party contacting the Department of Inspections and Appeals within a 'reasonable' or certain amount of time after the hearing is scheduled.* It is

assumed an appellant intends to participate in the hearing simply by the fact that an appeal is filed, but the appellant's responsibility does not end there. Each party is required to follow the prominent specific written instructions printed on the hearing notice. The appellant filed the appeal and is held solely responsible for going forward with the case in a prompt and deliberate manner. The rule holds an appellant in default if not present *at the start* of hearing. As a courtesy, appellant was granted an additional 15-minute grace period not required by statute or rule.

Here, notwithstanding notice, opportunity and additional time, Claimant failed to prosecute the case at the appointed date and time without providing a good-cause reason for the delay or failure to do so. Accordingly, the Claimant is in default and the appeal shall be dismissed. Iowa Code § 17A.12(3) and Iowa Admin. Code r. 26.14(7). The unemployment insurance decision remains in force and effect. If the Claimant does not intend to pursue this appeal, the Claimant need not take any action. If the Claimant intends to pursue this appeal, the Claimant must make a written request to the administrative law judge that the hearing be reopened within 15 days after the mailing date of this decision. The written request should be mailed to the administrative law judge at the address listed at the end of this decision and must explain the emergency or other good cause that prevented the Claimant from participating in the hearing at its scheduled time. The Claimant also has the option to appeal the decision directly to the Employment Appeal Board at the address listed in the caption appeal rights information.

DECISION:

The August 20, 2021 (reference 01) unemployment insurance decision concluding that Claimant Jessica Williams was ineligible for unemployment compensation benefits remains in effect as the claimant is in default and the appeal is dismissed.

Jonathan M. Gallagher
Administrative Law Judge
Department of Inspections and Appeals
Administrative Hearings Division

October 18, 2021

Decision Dated and Mailed

Cc: Jessica Williams, Claimant (by first class mail)
Walmart, Inc., Employer (by first class mail)
Karen Holett, IWD (by email)
Joni Benson, IWD (by AEDMS)

Case Title: WILLIAMS V. WALMART INC

Case Number: 22IWDUI0037

Type: Order - Abandonment/Default

IT IS SO ORDERED.

Jonathan Gallagher, Administrative Law Judge