

IOWA DEPARTMENT OF INSPECTIONS AND
APPEALS
Division of Administrative Hearings
Wallace State Office Building
Des Moines, Iowa 50319

Appeal Number: 15IWDUI389-390
OC: 06/03/12
Claimant: Appellant (6)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

JIMMY R. MURRAY
4290 NE 34TH COURT
DES MOINES, IA 50317

IOWA WORKFORCE DEVELOPMENT
KAREN VON BEHREN
INVESTIGATOR

Joni Benson, IWD
Jodi Douglas, IWD
Nicholas Olivencia, IWD
Emily Chafa, UI Appeals Manager

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed Notice of Appeal, directly to the **Employment Appeal Board, 4TH Floor Lucas Building, Des Moines, Iowa 50319.**

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to the department. 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

January 28, 2016

(Decision Dated & Mailed)

Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE

An appeal was filed from a representative's unemployment insurance decisions dated February 21, 2013 (reference 03) and March 4, 2013 (reference 02) that concluded Jimmy Murray was ineligible to receive unemployment insurance benefits, overpaid unemployment benefits, and made false statements concerning employment. Notice of hearing was mailed to the party's last known addresses of record for a telephone hearing to be held in-person at 2:00 PM on January 27, 2016 at the Wallace State Office Building, before Administrative Law Judge Kathleen M. O'Neill. At the date and time listed above, ALJ O'Neill and IWD investigator Karen Von Behren appeared for hearing. After fourteen minutes, the Appellant had not appeared. Based upon the Appellant's failure to participate

in the hearing, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

ISSUE

Should the appeal be dismissed based upon the Appellant not participating in the hearing?

FINDINGS OF FACT

The parties were properly notified of the scheduled hearing on this appeal. The Appellant did not call in to the conference call and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The representative's decision had concluded that the Appellant was not eligible for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW

The Iowa Administrative Procedures 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.

The Agency rules at Iowa Admin. Code r. 871-26.14(6) provide:

In the event that one or more parties which have received notice for a contested case hearing fail to appear at the time and place of an in-person hearing, the presiding officer may proceed with the hearing. If the appealing party fails to appear, the presiding officer may decide the party is in default and dismiss the appeal. The hearing may be reopened if the absent party makes a request to reopen the hearing under subrule 26.8(3) and shows good cause for reopening the hearing.

a. If an absent party arrives for an in-person hearing while the hearing is in session, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If an absent party arrives for an in-person hearing after the record has been closed and after any party which had participated in the hearing has departed, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire ex parte as to the reason the party was late. For good cause shown, the presiding officer shall cause notice of hearing to be issued to all parties of record and reopen the record. The record shall not be reopened if the presiding officer does not find a good cause for the party's late arrival.

The Appellant appealed the representative's decisions but failed to participate in the hearing. The Appellant has therefore defaulted on the appeal pursuant to Iowa Code §17A.12(3) and Iowa Admin. Code r. 871-24.14(6), and the representative's decision remains in force and effect.

If the Appellant disagrees with this decision, pursuant to the rule, the Appellant 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 Appellant from participating in the hearing at its scheduled time.

DECISION

The representative's unemployment insurance decisions dated February 21, 2013 (reference 03) and March 4, 2013 (reference 02) are affirmed. The decision denying benefits remains in effect.