

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

**DECISION OF THE ADMINISTRATIVE LAW JUDGE**

**STEVEN T. GIBSON**  
**4900 16<sup>TH</sup> AVE SW APT 104**  
**CEDAR RAPIDS, IA 52404**

**IOWA WORKFORCE DEVELOPMENT,**  
**KIRSTEN WOOD, INVESTIGATOR**

JONI BENSON, IWD  
JODI DOUGLAS, IWD  
NICHOLAS OLIVENCIA, IWD  
EMILY CHAFA, UI APPEALS MANAGER

**Appeal Number: 15IWDUI281**  
**OC: 11/16/14**  
**Claimant: Appellant (6)**

**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, 4<sup>TH</sup> 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.

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(Administrative Law Judge)

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September 30, 2015  
(Decision Dated & Mailed)

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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 decision dated July 22, 2015, (reference 04) that concluded Steven Gibson was overpaid unemployment insurance benefits in the amount of \$1,768.14 for 19 weeks between November 16, 2014 and May 30, 2015 because he failed to report wages earned with ELS of Florida, Inc. The Department concluded Mr. Gibson's failure to report wages constituted misrepresentation. The issues certified for appeal were whether the appellant filed a timely appeal; whether the Department

correctly determined that the Claimant was overpaid unemployment benefits and if so, whether the overpayment was correctly calculated; and whether the Department correctly determined the overpayment was a result of misrepresentation. Notice of hearing was mailed to the parties' last known addresses of record for a telephone hearing to be held at 1:30 p.m. on September 29, 2015, before Administrative Law Judge Tricia A. Johnston. The notice indicated that the judge would wait five minutes after the time the hearing was scheduled to begin to allow all parties to call in. The notice further indicated that if the appellant did not call in within that time, he would not be able to participate in the hearing.

On September 29, 2015 at 1:30 p.m., ALJ Johnston and IWD Investigator Kirsten Wood appeared for hearing. At 1:35 p.m. the appellant had not appeared. Based upon the appellant's failure to participate in the hearing and the law, 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, Steven Gibson, 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 Steven Gibson was overpaid unemployment insurance benefits in the amount of \$1,768.14 for 19 weeks between November 16, 2014 and May 30, 2015 because he failed to report wages earned with ELS of Florida, Inc. The Department concluded Mr. Gibson's failure to report his wages constituted misrepresentation.

**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(7) provide:

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 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. Instead, the presiding officer shall inquire ex parte as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.
- c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

The appellant appealed the representative's decision but failed to participate in the hearing. The appellant has therefore defaulted on his appeal pursuant to Iowa Code §17A.12(3) and Iowa Admin. Code r. 871-24.14(7), and the representative's decision remains in force and effect.

#### **DECISION:**

The representative's unemployment insurance decision (reference 04) dated July 22, 2015, is affirmed. The Department's determination remains in effect that Mr. Gibson was overpaid

unemployment insurance benefits in the amount of \$1,768.14 for 19 weeks between November 16, 2014 and May 30, 2015 because he failed to report wages earned with ELS of Florida, Inc. and his failure to report his wages was due to misrepresentation, warranting a 15% penalty.