

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ARLENE GREEN

Claimant

APPEAL 21A-UI-19909-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC

Employer

OC: 07/18/21

Claimant: Respondent (6)

Iowa Code § 96.5(2)a – Discharge for Misconduct

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation (FPUC)

Iowa Code § 17A.12(3) – Default Decision

Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

The employer/appellant, Express Services Inc., filed an appeal from the September 3, 2021 (reference 03) unemployment insurance decision that allowed benefits. Notice of the hearing was mailed to the employer's last known address of record for a telephone hearing to be held at 8:00 a.m. on October 29, 2021.

The appellant registered a phone number with the Appeals Bureau as directed on the hearing notice, but was not available when called for the hearing. The appellant referenced sending a letter to withdraw the appeal but no letter was received by the Appeals Bureau. A voicemail was provided, directing the appellant to call the Appeals Bureau immediately to participate. A grace period was extended to allow the appellant to respond before the record was closed. No hearing was held.

ISSUE:

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

FINDINGS OF FACT:

The claimant and employer were properly notified of the scheduled hearing for this appeal. The employer did not answer at the telephone number on the appeal letter or provide a different telephone number prior to the hearing. Employer did not request a postponement of the hearing.

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

IMPORTANT NOTICE!

YOU MUST PROVIDE YOUR PHONE NUMBER TO THE APPEALS BUREAU
AS SOON AS POSSIBLE. If you do not follow these instructions, the judge will

not call you for the hearing. You must also provide the name(s) and phone number(s) of any witnesses to the Appeals Bureau.

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

Failure to Participate or Register for Appeal Hearing

If you do not participate in the hearing, the judge may dismiss the appeal or issue a decision without considering your evidence. The Appeals Bureau does not have a phone number for this hearing unless you provide it to us by following the instructions on the other side of this page. If you do not follow those instructions, the judge will not call you for the hearing. 871 IAC 26.14(7).

The information quoted above also appears on the hearing notice in Spanish.

The administrative law judge held the record open for 15 minutes past the scheduled start time to allow the employer a reasonable opportunity to participate. However, employer did not contact the Appeals Bureau to participate during that time frame.

The unemployment insurance decision appealed by employer concluded that the claimant was eligible for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedure Act at Iowa Code § 17A.12(3) states that if a party fails to appear for or participate in a hearing after being properly notified, 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, in relevant part:

(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 provide in Iowa Code section 17A.12(3).

In this case, the employer was not available for the hearing at the telephone number it provided to the Appeals Bureau. Therefore, the employer is in default and the appeal is dismissed.

If the employer disagrees with this decision, the employer may appeal the decision directly to the Employment Appeal Board, whose address is listed at the top right caption.

DECISION:

The employer/appellant is in default and the appeal is dismissed. The unemployment insurance decision dated September 3, 2021 (reference 03) allowing benefits remains in effect.



Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

November 16, 2021 _____
Decision Dated and Mailed

jlb/mn