

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEPHANIE ROILAND

Claimant

APPEAL 22A-UI-04561-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 01/16/22

Claimant: Respondent (6)

Iowa Code § 96.5(2)(a) - Discharge
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 February 11, 2022, the employer filed a timely appeal from the February 3, 2022 (reference 01) decision that allowed benefits to the claimant, provided the claimant was otherwise eligible, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on December 27, 2021 for no disqualifying reason. A notice of hearing was mailed to the parties' last-known addresses of record for a telephone hearing scheduled for 1:00 p.m. on March 24, 2022. Neither party appeared. Neither party complied with the hearing notice instructions to call the designated toll-free number at the time of the hearing. Based upon the employer/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:

Whether the appeal should be dismissed based on the employer/appellant's failure to appear and participate.

FINDINGS OF FACT:

The employer is the appellant in this matter. The parties were properly notified of the March 24, 2022 scheduled hearing for this appeal through notice mailed on March 14, 2022. The notice was directed to the claimant's Des Moines address of record, to the employer's Ankeny corporate address of record, and to the employer's third-party representative, Valeu NSN, at its Chicago, Illinois address. There is no reason to believe the notice directed to the employer's Ankeny address of record was delivered to the employer in an untimely manner. The employer representative provided insufficient information to establish the hearing notice directed to Valeu NSN was delivered in an untimely manner.

On March 23, 2022, Marideliz Ortiz, Valeu NSN Account Executive, submitted an untimely request to reschedule the hearing in this appeal number and another hearing set on March 24, 2022, concerning the same employer but a different claimant. In the written request, Ms. Ortiz asserted Valeu NSN had just received the hearing notice on the morning of March 23, 2022 and

had insufficient time to prepare for the hearing. Though Ms. Ortiz did not provide a telephone number in the reschedule request, the administrative law judge was able to locate a telephone number for Valeu NSN in the appeal letter.

On March 23, 2022, the administrative law judge called and spoke with Ms. Ortiz. The call addressed this matter and 22A-UI-04563-JT-T and the recording of the call is filed on the Clear2There system under this appeal number, 22A-UI-04561-JT-T. During the call, Ms. Ortiz outlined a multi-step process whereby Valeu NSN receives, processes and eventually forwards hearing notices to the Account Executive assigned to handle the appeal hearing. Ms. Ortiz advised that she had just become aware of the hearing notice on the morning of March 23, 2022, when Valeu NSN forwarded the hearing notice to her. Ms. Ortiz was unable to state when the hearing notice was delivered to Valeu NSN or how long Valeu NSN had the hearing notice in its possession before the company eventually routed the hearing notice to Ms. Ortiz. Though Iowa Workforce Development does not use the SIDES system to communicate with employers regarding appeals, Ms. Ortiz asserted she was unable to provide particulars regarding when Valeu NSN received the hearing notice because the SIDES system was down. Based on the employer receiving the hearing notice in a timely manner at its Ankeny corporate address of record, based on the employer's appeal being pending for more than a month with zero preparation and zero communication between the employer and its third-party representative, and based on the discussion with Ms. Ortiz, the administrative law judge concluded there was not good cause to reschedule the hearing. The administrative law judge told Ms. Ortiz the reschedule request was denied, but that the administrative law judge would be open to returning to the topic on March 24, 2022 at the time of the hearing.

At the time of the hearing, the employer/appellant failed to call the toll-free number listed on the hearing notice at the time of the hearing and did not participate. The employer representative did not take any steps to substantiate the as yet unsubstantiated assertion that the employer representative, Valeu NSN, received untimely notice of the hearing.

The hearing notice instruction advised parties of the date and time of hearing. It also stated:

IMPORTANT NOTICE!

YOU MUST CALL the toll-free number: **866-783-7021** at the time of the hearing. When instructed, enter the PIN Number ... followed by the pound key [#] and wait for the administrative law judge to begin the hearing.

The administrative law judge **WILL NOT** call you for the hearing, you **MUST** call into the number provided above to participate. **Failure to participate in the hearing may result in the dismissal of your appeal.**

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 will not call you to participate in the hearing. Instructions for participating are on the other side of this page. 871 IAC 26.14(7)

An insert was sent along with the hearing notice stating:

ATTENTION!

Instructions for participating in a hearing have changed.

Please review the enclosed hearing notice carefully and follow the instructions on how to join the call on the scheduled day and time of the hearing.

As a courtesy to the employer/appellant, the record was left open until 1:19 p.m. to give the employer/appellant a reasonable opportunity to participate.

The February 3, 2022 (reference 01) decision allowed benefits to the claimant, provided the claimant was otherwise eligible, and held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on December 27, 2021 for no disqualifying reason.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedure Act at Iowa Code § 17A.12(3) provides that if a party fails to appear or participate in a hearing after proper service of notice, 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:

(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 provided in Iowa Code section 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.

In this case, the employer/appellant did not call the toll-free number listed on the hearing notice at the time of the hearing. The employer/appellant is in default. The appeal should be dismissed.

If the employer/appellant disagrees with this decision, the employer/appellant may appeal the decision to the Employment Appeal Board pursuant to the instructions on the first page of this decision.

DECISION:

The employer defaulted on the appeal. The appeal is dismissed. The February 3, 2022 (reference 01) decision that allowed benefits to the claimant, provided the claimant was otherwise eligible, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on December 27, 2021 for no disqualifying reason, remains in effect.



James E. Timberland
Administrative Law Judge
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April 18, 2022
Decision Dated and Mailed

jet/mh