

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NEMAH A KAMARA
Claimant

LINK ASSOCIATES
Employer

APPEAL 21A-UI-05595-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/21/20
Claimant: Appellant (6)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Admin. Code r. 871-24.23(26) – Same hours and wages
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 claimant/appellant filed an appeal from the November 10, 2020 (reference 02) unemployment insurance decision that concluded the claimant was not eligible for benefits due to the claimant still being employment at the same hours and same wages as the original contract of hire. A notice of hearing was mailed to each parties' last known addresses of record for a telephone hearing scheduled for April 27, 2021. A review of the Appeals Bureau's conference call system indicates that the appellant did not register a telephone number to be contacted at for the start of the hearing. Because the appellant failed to follow the instructions on the notice of hearing by registering a telephone number to be contacted at the time and date scheduled for this appeal hearing, no hearing was held.

ISSUE:

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

FINDINGS OF FACT:

The appellant was properly notified of the scheduled hearing for this appeal. The appellant failed to register a telephone number to be called at the time scheduled for this appeal hearing. The appellant did not request a postponement of the hearing. Official notice of the Clear2there hearing control screen is taken to establish that appellant did not call or register online with the Appeals Bureau to provide a telephone number and/or name of a representative before the date and time the hearing was scheduled. The appellant did not call in before the record was closed, 15 minutes after the hearing was scheduled to begin.

The hearing notice instruction specifically advises parties in English and Spanish:

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.

The hearing notice lists the hearing date of TUE APR 27, 2021 and the hearing time as 11:05 a.m. Iowa time. The back page of the hearing notice provides further warning in both languages:

You must register a phone number for each hearing by following the instruction on the front of this notice...

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.

The record was left open for a grace period of 15 minutes after the hearing start time to give the appellant a reasonable opportunity to participate. This reasonable amount of time is appropriate because if a hearing were conducted with the non-appealing party alone it would have likely concluded in 15 minutes or less. Allowing additional time would prejudice the non-appealing party for appearing in a timely manner. The 15 minute wait time is also a reasonable period to hold the record open as insufficient time would remain to conduct a quality due process hearing in the time allotted by the Appeals Bureau. Each two-party hearing is allowed 60 minutes and a one-party hearing allowed 30 minutes. Holding the appellant in default for failure to appear and participate during the 15-minute window after the hearing start time is entirely reasonable considering the time allocated for unemployment hearings.

The November 10, 2020 (reference 02) unemployment insurance decision had concluded that the claimant was not eligible for unemployment insurance benefits because they were still employed at the same hours and same wages as the original contract of hire.

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) 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.

- 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.
- c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

Due process requires notice and an opportunity to be heard, both of which were provided to the parties. The appellant is responsible for going forward with the case in a prompt and thoughtful manner. The appellant must be present at the start of the hearing to avoid a default judgment. Iowa Code 17A.12(3) and Iowa Admin. Code r. 26.14(7). The hearing notice instructs the parties to:

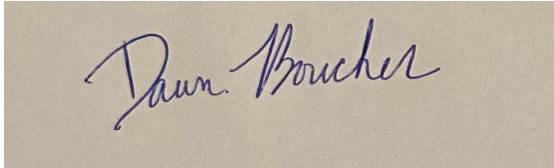
1. Read the hearing notice.
2. Register a telephone number where the party can be reached for the hearing.
3. Be available at that number at the date and time of the hearing.

The Iowa Supreme Court has held 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 register a telephone number where the party can be reached for the hearing. The second part of that directive is to be available at the number provided at the date and time of the hearing. Further, if the party misses or does not receive the hearing call, he or she may call the telephone numbers 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 Appeals Bureau 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.

DECISION:

The November 10, 2020 (reference 02) unemployment insurance decision concluding that the claimant was not eligible for benefits due to the claimant still being employed at the same hours and same wages at the original contract of hire remains in effect as the appellant is in default and the appeal is dismissed.

This decision denies regular unemployment insurance benefits funded by the State of Iowa. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits. See Note to Claimant below.



Dawn Boucher
Administrative Law Judge

April 30, 2021
Decision Dated and Mailed

db/kmj

Note to Claimant

- This decision determines you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance (PUA) section of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) that discusses eligibility for claimant who are unemployed due to the Coronavirus public health emergency.
- You will need to apply for PUA benefits to determine your eligibility under the program. For additional information on how to apply for PUA go to: <https://www.iowaworkforcedevelopment.gov/pua-information>
- If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA benefits please visit: <https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to "Submit Proof Here." You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the

program expires. Back payments of PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting:

<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>

- If you have applied for PUA benefits and have been approved for PUA benefits, this decision will not negatively affect your PUA benefits.