

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RODNEY E BILLINGS

Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 21A-UI-21499-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/26/20

Claimant: Appellant (6R)

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

Claimant filed an appeal from the September 20, 2021 (reference 03) unemployment insurance decision that found claimant was overpaid unemployment insurance (UI) benefits. Notice of hearing was mailed to the appellant's last known address of record for a telephone hearing scheduled for November 23, 2021. A review of the Appeals Bureau's conference call system indicates that the appellant was not available at the telephone number provided for the scheduled hearing and no hearing was held.

ISSUE:

Whether the appeal should 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 was not available at the telephone number provided for the scheduled hearing and did not participate or request a postponement of the hearing as required by the hearing notice. Official notice of the Clear2there hearing control screen is taken to establish that appellant did not answer when called at the number provided at registration.

The hearing notice instruction specifically advises parties of the date and time of 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.

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.

As a courtesy to the appellant the record was left open for a minimum of 15 minutes after the hearing start time to give the appellant a reasonable opportunity to participate. Holding the appellant in default for failure to appear and participate during a 15-minute window after the hearing start time is reasonable considering the time allocated for unemployment hearings.

The representative's decision concluded that claimant was overpaid UI benefits.

The issues of separation and whether claimant was able to and available for work effective November 13, 2020 have been remanded for an initial interview and determination in appeal 21A-UI-21498-AW-T. The issue of overpayment should also be remanded for review consistent with the remand in appeal 21A-UI-21498-AW-T.

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, in pertinent 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 provided in Iowa Code section 17A.12(3).

In this case, the appellant was not available at the registered telephone number. The appellant is in default. The appeal should be dismissed.

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

DECISION:

The September 20, 2021 (reference 03) unemployment insurance decision finding claimant was overpaid UI remains in effect as the appellant is in default and the appeal is dismissed.

REMAND:

The issue of overpayment is remanded for review consistent with the remand in appeal 21A-UI-21498-AW-T.

A handwritten signature in black ink, appearing to read "Adrienne C. Williamson", is positioned above a horizontal line.

Adrienne C. Williamson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

December 3, 2021
Decision Dated and Mailed

acw/ACW