

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL J SMALL
Claimant

LABOR READY MIDWEST INC
Employer

APPEAL 16A-UI-11293-DB

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/18/16
Claimant: Appellant (6)

Iowa Code § 96.5(1) – Voluntary Quitting
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, Michael J. Small, filed an appeal from the October 11, 2016 (reference 01) unemployment insurance decision that concluded claimant voluntarily quit his employment on March 23, 2016 when he failed to notify the temporary employment firm within three working days of the completion of his last work assignment.

Notices of hearing were mailed to both parties' last known addresses of record for an in person hearing scheduled for November 7, 2016. The hearing notice was returned to the agency by the United States Postal Service on October 31, 2016 stating "return to sender not deliverable as addressed unable to forward." The hearing notice was mailed to the address the claimant provided with his appeal. The appeal was filed on October 13, 2016. Claimant telephoned the appeals bureau on Friday, November 4, 2016 regarding the hearing. Claimant was informed that a hearing on another case had been set for him at 12:00 p.m. on November 7, 2016. Claimant was then telephoned on two separate occasions on November 4, 2016 and two separate voicemail messages were left for claimant informing him that he needed to attend this matter at 11:00 a.m. on Monday, November 7, 2016. Because the appellant failed to follow the instructions on the notice of hearing, and was not available for the in-person hearing at the time and date scheduled for this appeal hearing, no hearing was held. The record was closed at 11:25 a.m.

ISSUE:

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

FINDINGS OF FACT:

The claimant was properly notified of the scheduled hearing for this appeal. The appellant failed to appear for the in-person hearing at the time scheduled for this appeal hearing as required by the hearing notice. The appellant did not request a postponement of the hearing. No hearing was held.

The hearing notice instruction specifically advises parties:

In-Person Hearing:

MON	NOV 07, 2016	Date
11:00 AM		Iowa Time

Location:

1000 East Grand Ave
Des Moines, Iowa 50319-0209

When you arrive at the hearing location, do not wait in line. You should immediately ask workforce center staff where to go for the hearing. On the scheduled date, you must be present at the location identified above and ready to participate in the hearing at the scheduled time.

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

Failure to Participate

If you do not participate in the hearing, the judge may dismiss the appeal or issue a decision without considering your evidence or witness(es).

This information is provided in the Spanish language as well.

The record was left open for a grace period of 20 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 20-minute window after the hearing start time is reasonable considering the time allocated for each unemployment hearing. Allowing this additional time period is more than reasonable under the circumstances.

The unemployment insurance decision had concluded that the claimant voluntarily quit his employment on March 23, 2016 when he failed to notify the temporary employment firm within three working days of the completion of his last work assignment and that he was not eligible for benefits.

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.**

Iowa Admin. Code r. 871-26.14(6) provides:

(6) In the event that one or more parties which have received notice for a contested case hearing fail to appear at the time and place of an in-person hearing, the presiding officer may proceed with the hearing.

a. If an absent party arrives for an in-person hearing while the hearing is in session, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If an absent party arrives for an in-person hearing after the record has been closed and after any party which had participated in the hearing has departed, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire ex parte as to the reason the party was late. For good cause shown, the presiding officer shall cause notice of hearing to be issued to all parties of record and reopen the record. The record shall not be reopened if the presiding officer does not find a good cause for the party's late arrival.

The Iowa Supreme Court has opined 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 be present at the date and time scheduled for the hearing. 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 20-minute grace period not required by statute or rule.

Here, notwithstanding notice, opportunity and additional time, the appellant failed to prosecute the case at the appointed date and time without providing a good-cause reason for the delay or failure to do so. Accordingly the appellant is in default and the appeal shall be dismissed. Iowa Code § 17A.12(3) and Iowa Admin. Code r. 26.14(7). The unemployment insurance decision remains in force and effect.

If the appellant does not intend to pursue this appeal, the appellant need not take any action. If the appellant intends to pursue this appeal, the appellant must make a written request to the administrative law judge that the hearing be reopened within 15 days after the mailing date of this decision.

The written request should be mailed to the administrative law judge at the address listed at the end of this decision and must explain the emergency or other good cause that prevented the appellant from participating in the hearing at its scheduled time. The appellant also has the option to appeal the decision directly to the Employment Appeal Board at the address listed in the caption appeal rights information.

DECISION:

The October 11, 2016 (reference 01) unemployment insurance decision concluding that claimant was not eligible for benefits remains in effect as the appellant is in default and the appeal is dismissed.

Dawn Boucher
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed

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