IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

ZACHARY A KEHOE
Claimant

EXPRESS AMERICA INC
Employer

APPEAL 22A-UI-05101-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/05/21
Claimant: Respondent (6)

Iowa Code § 96.6(2) - Timeliness of Appeal
Iowa Code § 96.6(2) - Timeliness of Protest
Iowa Code § 17A.12(3) - Default Decision
Iowa Admin. Code r. 871-26.14(7) - Dismissal of Appeal on Default

STATEMENT OF THE CASE:

February 18, 2022, employer/appellant, Express America Inc., appealed the February 4, 2022, reference 03, decision that granted benefits finding the protest of the 11/15/21 separation untimely submitted on 01/21/22 as it was not within ten days of 12/09/21. After due notice was issued, a hearing was held on April 5, 2022. The claimant did not participate. The Appeals Bureau's conference call system indicates that the employer/appellant failed to call into the hearing at the time of the hearing and did not participate. Because the claimant/appellant failed to follow the instructions on the notice of hearing, no hearing was held. Exhibits D-1 and D-2 were received into the record. Official notice was taken of the agency records.

ISSUES:

Should the appeal be dismissed based on the appellant's failure to appear and participate?
Is the appeal timely?
Did the employer file a timely protest?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The above decision (reference 03) was mailed to the employer/appellant's last known address of record on 02/04/2022. To be timely, an appeal needed to be filed on or before 02/14/2022. The decision also directed appellant to call the customer service line for assistance. Appellant timely received the decision. The appeal is filed via fax on 02/18/2022. (Exhibit D-1).

The notice of claim was mailed to the employer's address of record on December 9, 2021. The employer received the notice of claim on or before December 18, 2021, as that is the date employer signed and dated the protest. The notice of claim read in pertinent part, "Protest forms submitted to Iowa Workforce Development must be postmarked or faxed by the due date shown above." The due date written on the notice of claim was December 20, 2021, and it is stamped that it was postmarked on January 21, 2022. (Exhibit D-2).

The parties were properly notified of the scheduled hearing for this appeal. Appellant failed to call the toll-free number listed on the hearing notice at the time of the hearing. The appellant 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 call at the time of the hearing.

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

IMPORTANT NOTICE!

YOU MUST CALL the toll-free number: **866-783-7021** at the time of the hearing. When instructed, enter the PIN Number **105101** 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 hearing instructions stating, "You must call the toll-free number on the front of this notice at the time of the hearing to participate." This information also appears on the hearing notice in Spanish.

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 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 remains in effect.

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. The parties shall be duly notified of the decision, together with the presiding officer's reasons for the decision, which is the final decision of the agency, unless within fifteen days, or such period of time as otherwise specified by statute or rule, after the date of notification or mailing of the decision, further appeal is initiated. 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(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.

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 judgement. Iowa Code § 17A.12(3) and Iowa Admin. Code r. 26.14(7). The hearing notice instructs the parties to read the hearing notice; call the toll-free number at the time of the hearing and wait for the judge; the judge will not call you; and failure to participate may result in the dismissal of your appeal.

The Iowa Supreme Court has held a default should not be set aside due to the appellant's negligence, carelessness, or inattention. See *Houlihan v. Emp't Appeal Bd.*, 545 N.W.2d 863 (Iowa 1996). Similarly, a default should not be set aside because the appellant has ignored clear requirements in the rules. Rather, a party must show it intended to proceed with the appeal and took steps to do so, but failed to appear because of some misunderstanding, accident, mistake or excusable neglect. Employer/appellant was not present at the start of the hearing. As a *curtesy*, employer was granted additional time not required by statue or rule. The representative's decision remains in force and effect.

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 February 4, 2022, reference 03, decision granting benefits remains in effect, as the appellant is in default and the appeal is **DISMISSED**.

Darrin T. Hamilton
Administrative Law Judge

April 12, 2022
Decision Dated and Mailed

dh/scn