IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

ROXANNE M HUGHES Claimant **EXPRESS SERVICES INC** Employer	**APPEAL 21A-UI-22980-CS-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 05/16/21** **Claimant: Respondent (6)**

Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default
Iowa Code §96.5(2)a-Discharge/Misconduct
Iowa Code §96.5(1)- Voluntary Quit
Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation (FPUC)

STATEMENT OF THE CASE:

On October 13, 2021, the employer/appellant filed an appeal from the October 7, 2021 (reference 03) unemployment insurance decision that allowed benefits. A notice of hearing was mailed to the parties' last known addresses of record for a telephone hearing scheduled for December 7, 2021. A review of the Appeals Bureau's conference call system indicates that the appellant failed to call the toll-free number listed on the hearing notice at the time of the 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 parties were properly notified of the scheduled hearing for this appeal. The 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 . . . 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 concluded that claimant was eligible for benefits.

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 appellant did not call the toll-free number listed on the hearing notice at the time of the hearing. 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. The representative's decision remains in force and effect.

DECISION:

The October 7, 2021 (reference 03) unemployment insurance decision remains in effect as the appellant is in default.



Carly Smith
Administrative Law Judge

January 7, 2022
Decision Dated and Mailed

cs/mh