

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TYRELL M RUSH
Claimant

APPEAL NO. 19A-UI-08412-S1

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 09/01/19
Claimant: Appellant (6)**

Iowa Code § 96.4-3 – Able and Available
Iowa Code § 17A.12(3) - Default Decision
871 IAC 26.14(6) - Dismissal of Appeal on Default

STATEMENT OF THE CASE:

An appeal was filed from a representative's unemployment insurance decision dated October 16, 2019, (reference 03), that concluded Tyrell Rush (claimant/appellant) was not eligible for unemployment insurance benefits from September 22, 2019, to September 28, 2019. Notice of hearing was mailed to the party's last-known address of record for a hearing to be held at 11:10 a.m. on December 12, 2019, in Cedar Rapids, Iowa. The claimant/appellant failed to respond to the hearing notice and appear for the hearing at the designated hearing site.

ISSUE:

The issue is whether the underlying decision should be affirmed and the appeal should be effectively dismissed based upon the claimant/appellant's failure to participate in the hearing.

FINDINGS OF FACT:

The claimant/appellant requested the in-person hearing. The party was properly notified of the scheduled hearing on this appeal. A Notice of Appeal and Hearing was mailed to the claimant/appellant on November 20, 2019. There is no evidence suggesting the claimant/appellant did not receive the hearing notice prior to the hearing scheduled at 11:10 a.m. on December 12, 2019, in Cedar Rapids, Iowa. The claimant/appellant did not request a postponement of the hearing. The unemployment insurance decision concluded that the claimant/appellant is not eligible for unemployment insurance benefits from September 22, 2019, through September 28, 2019.

The hearing notice instruction specifically advised the party of the date and time of the hearing. It also states:

IMPORTANT!

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. If you or one of your witnesses needs an interpreter, you should notify the Appeals Bureau immediately so that the Appeals Bureau can arrange for an interpreter for the hearing.

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

Appeal Hearing Procedure

You must appear at the location on the front of this notice for this in-person hearing. An administrative law judge will lead the hearing. Each participant will testify under oath. You can call witnesses, ask witnesses questions, and present other evidence. All hearings are recorded. 871 IAC 26.14.

Failure to Participate in Appeal Hearing

If you do not participate in the hearing, the judge may dismiss the appeal or issue a decision without considering your evidence. You can ask to participate in the in-person hearing via telephone. 871 IAC 26.6(4).

The information quoted above was also provided in Spanish on the hearing notice.

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. 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 hearing is allowed 60 minutes. Holding the appellant in default for failure to appear and participate during a 15-minute window after the hearing start time is entirely reasonable considering the time allocated for unemployment hearings.

The representative's decision concluded that the claimant/appellant was overpaid unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedure Act at Iowa Code section 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(6) provides:

(6) If one or more parties which 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. If the appealing party fails to appear, the presiding officer may decide the party is in default and dismiss the appeal. The hearing may be reopened if the absent party makes a request in writing to reopen the hearing under subrule 26.8(3) and shows good cause for reopening 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.

The claimant/appellant appealed the unemployment insurance decision but failed to appear to participate in the hearing. The appellant has therefore defaulted on the appeal pursuant to Iowa Code section 17A.12(3) and Iowa Admin. Code r. 871-26.14(6), and the unemployment insurance decision remains in force and effect.

DECISION:

The representative's unemployment insurance decision dated October 16, 2019, (reference 03), is affirmed. The decision denying benefits remains in effect.

Beth A. Scheetz
Administrative Law Judge
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Iowa Workforce Development
1000 East Grand Avenue
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Decision Dated and Mailed

bas/scn