

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VICTOR AGUILAR
Claimant

WALMART, INC.
Employer

APPEAL 21A-UI-14322-WG-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (6)

Iowa Code §96.5(1) – Voluntary Quit
Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(6) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

The claimant/appellant, Victor Aguilar, filed an appeal from the June 8, 2021, (reference 01) unemployment insurance decision that concluded he was not eligible for unemployment insurance benefits. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for August 10, 2021. A review of the Appeals Bureau's conference call system indicates that the appellant responded to the hearing notice and provided a telephone number at which he could be reached for the scheduled hearing. However, at the time of the scheduled hearing, claimant did not answer his phone and did not call in to participate in the hearing after being given notice via voicemail that the undersigned would declare a default if claimant did not call in timely. Because the claimant/appellant failed to answer his phone and appear for 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 answer his phone at the assigned hearing time, as required by the hearing notice. He did not request a postponement of the hearing before the hearing date. A voicemail was left for the claimant at the phone number he registered for the hearing, advising that he needed to timely call in or that the record would be closed 15 minutes after the hearing was scheduled to begin. The appellant did not call in before the record was closed, 15 minutes after the hearing was scheduled to begin.

The hearing notice lists the hearing date of Tuesday, August 10, 2021 and the hearing time as 3:00 p.m. Iowa time. The back page of the hearing notice provides warning in English and Spanish:

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 use 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.

The record was left open for a grace period 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. 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 two-party hearing is allowed 60 minutes and a one-party hearing allowed 30 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 unemployment insurance decision had concluded that the claimant was not eligible for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedures 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) 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.

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(6). The hearing notice instructs the parties to:

1. Read the hearing notice.
2. Register a telephone number where the party can be reached for the hearing.
3. Be available at that number at the date and time of the hearing.

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. The appellant was not present at the start of the hearing. As a *courtesy*, appellant was granted additional time not required by statute or rule. The representative's decision remains in force and effect.

Pursuant to the rule, the appellant may make a written request to the administrative law judge that the hearing be reopened, but must do so 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, whose address is listed at the top right caption.

DECISION:

The June 8, 2021, (reference 01) unemployment insurance decision denying benefits remains in effect as the appellant is in default and the appeal is dismissed.

A handwritten signature in cursive script, reading "William H. Grell". The signature is written in black ink and is positioned above a horizontal line.

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

August 17, 2021
Decision Dated and Mailed

whg/mh