

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JACOB A BERNAL**  
Claimant

**APPEAL 17A-UI-11143-TN**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT**

**OC: 11/06/16  
Claimant: Appellant (6)**

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Iowa Code §96.3(7) – Overpayment of Benefits  
Iowa Code §96.6(2) – Untimely Appeal  
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 filed an appeal from the unemployment insurance decision dated January 12, 2017, reference 06, that established an overpayment of benefits in the amount of \$719.00. The appeal was filed on October 31, 2017. The claimant requested an in-person hearing. Notices of hearing were mailed to the claimant's last known address of record for an in-person hearing scheduled in Council Bluffs, Iowa, on December 1, 2017, at 3:05 p.m. The claimant/appellant did not 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 claimant was properly notified of the scheduled hearing for this appeal. The appellant requested an in-person hearing. The claimant/appellant did not appear for the hearing at the proper time and place. He did not follow the instructions on the Notice of Appeal and Hearing. Because the claimant/appellant did not appear, no hearing was held.

The hearing notice included the date, time and location, and specifically advises parties:

Date: FRI DEC 01, 2017  
Iowa Time: 03:05 PM  
Location: 300 Broadway Ste 13, Council Bluffs, Iowa 51503-9030

**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 to be at the hearing.

The back of the hearing notice includes this information:

**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).

As a *courtesy* to the appellant the record was left open for a grace period 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 is reasonable considering the time allocated for each unemployment hearing.

The unemployment insurance decision had concluded that the claimant owed an overpayment.

**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.**

Agency rules at Iowa Admin. Code r. 26.14(6) provide:

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 appealing 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.

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 claimant was clearly directed to read the hearing notice and appear at the location listed on the notice of

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 he or she is not present *at the start* of hearing. As a courtesy, appellant was granted an additional 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. 871-26.14(6). The unemployment insurance decision remains in force and effect.

If the appellant does not intend to pursue this appeal, he need not take any action. If he intends to pursue this appeal, he may appeal the decision directly to the Employment Appeal Board at the address listed on the front page of this decision. Or, he may make a written request to the administrative law judge that the hearing be reopened. The written request should be mailed to the administrative law judge at the address listed on the front page 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. If he intends to pursue this appeal, the appellant must take one of these actions within 15 days after the mailing date of this decision.

**DECISION:**

The unemployment insurance decision issued on January 12, 2017, reference 06, establishing an overpayment in the amount of \$719.00 remains in effect as the appellant is in default. The appeal is dismissed.

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Terence Nice  
Administrative Law Judge

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Decision Dated and Mailed

tn/ec/rvs