

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHERYL M DIGGS
Claimant

MENARD INC
Employer

APPEAL 18A-UI-05990-TN

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/06/18
Claimant: Appellant (6)

Iowa Code §96.5(2)(a) – Discharge for Misconduct
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, Cheryl Diggs, filed an appeal from the unemployment insurance decision dated May 25, 2018, reference 01, that concluded she was not eligible for unemployment insurance benefits after a separation from employment. The claimant requested an in-person hearing. On July 9, 2018, notices of hearing were mailed to the parties' last known addresses of record for an in-person hearing scheduled in Council Bluffs, Iowa, on July 20, 2018, at 1:00 p.m. The claimant/appellant did not appear for the hearing. The employer did appear by telephone and was prepared to proceed with the hearing. No hearing was held, because the appellant failed to appear.

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 claimant/appellant, Cheryl Diggs, requested an in-person hearing. The claimant/appellant did not appear for the hearing at the proper time and place. She did not follow the instructions on the Notice of Appeal and Hearing. The employer was prepared to proceed with the 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 JUL 20, 2018
Iowa Time: 1:00 PM
Location: 300 W BROADWAY STE 13, COUNCIL BLUFFS, IOWA

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 minimum 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 was not eligible for unemployment insurance benefits.

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. 871-26.14(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 for the in-person hearing as directed. 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, the appellant was granted an additional 20 minute 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, she need not take any action. If she intends to pursue this appeal, she may appeal the decision directly to the Employment Appeal Board at the address listed on the front page of this decision. Or, she 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 she 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 May 25, 2018, reference 01, denying benefits remains in effect as the appellant is in default. The appeal is dismissed.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/ec/rvs