

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MAY C PUTMAN
Claimant

NUCARA HOME ASSISTANCE INC
Employer

APPEAL 22A-UI-07115-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/02/21
Claimant: Respondent (6)**

Iowa Code § 96.6(2) - Timeliness of Protest
Iowa Code § 17A.12(3) - Default Decision
Iowa Admin. Code r. 871-26.14(7) - Dismissal of Appeal on Default

STATEMENT OF THE CASE:

Employer/appellant, Nucara Home Assistance, Inc., filed an appeal from the March 9, 2022, (reference 06) unemployment insurance decision that found employer's protest untimely. The parties were properly notified of the hearing. A telephone hearing was held on May 2, 2022. Claimant, May Putman did not participate. The Appeals Bureau's conference call system indicates that the employer/appellant failed to call into the hearing at the time of the hearing and did not participate. Because the employer/appellant failed to follow the instructions on the notice of hearing, no hearing was held. Department's Exhibit D-1 was admitted. Judicial notice was taken of the administrative record.

ISSUE:

Should the appeal be dismissed based on the appellant's failure to appear and participate?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Notice of Claim was mailed to employer at its correct address on 08/04/21. Employer completed and signed the Statement of Protest on 08/16/21. The Notice of Claim lists a due date of 08/16/21. In employer's appeal, it states the notice was received on 08/17/21 (even though it is dated the day before) and that it was submitted to IWD on 08/17/21 (but does not mention if mailed, faxed or otherwise how sent. Iowa Workforce Development stamped the document received on 08/17/21. Employer provided no reason for the delay in submitting its protest to Iowa Workforce Development.

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 **107115** 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 remains in effect.

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. The parties shall be duly notified of the decision, together with the presiding officer's reasons for the decision, which is the final decision of the agency, unless within fifteen days, or such period of time as otherwise specified by statute or rule, after the date of notification or mailing of the decision, further appeal is initiated. 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(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.

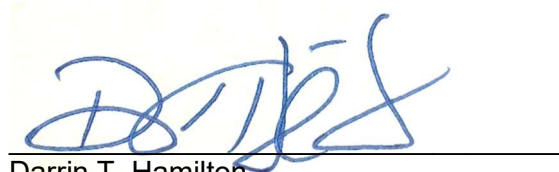
Due process requires notice and an opportunity to be heard, both of which were provided to the parties. The appellant is responsible for going forward with the case in a prompt and thoughtful manner. The appellant must be present at the start of the hearing to avoid a default judgement. Iowa Code § 17A.12(3) and Iowa Admin. Code r. 26.14(7). The hearing notice instructs the parties to read the hearing notice; call the toll-free number at the time of the hearing and wait for the judge; the judge will not call you; and failure to participate may result in the dismissal of your appeal.

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

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.

DECISION:

The March 9, 2022, (reference 06) unemployment insurance decision finding Employer's protest was untimely remains in effect, as the appellant is in default and the appeal is **DISMISSED**.



Darrin T. Hamilton
Administrative Law Judge

May 12, 2022

Decision Dated and Mailed

dh/ac