

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CESAR D GUILLEN

Claimant

APPEAL 21A-UI-18991-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PACKERS SANITATION SERVICES INC

Employer

OC: 05/30/21

Claimant: Respondent (6)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview
PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation
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 filed an appeal from the August 17, 2021 (reference 01) unemployment insurance decision that allowed benefits. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for October 20, 2021. A review of the Appeals Bureau's conference call system indicates that the appellant failed to respond to the hearing notice and provide a telephone number at which appellant could be reached for the scheduled hearing. The administrative law judge registered the appellant based upon information gathered from the appeal letter. The appellant was not available at the telephone number on the appeal letter; therefore, no hearing was held.

ISSUE:

Whether the appeal should 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 did not register a telephone number at which it could be reached for the hearing. The administrative law judge registered the appellant based upon information gathered from the appeal letter. The appellant was not available at the telephone number listed on the appeal letter and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Official notice of the Clear2there hearing control screen is taken to establish that appellant did not register a telephone number for the hearing and did not answer when called at the number the administrative law judge registered from the appeal letter.

The hearing notice instruction specifically advises parties of the date and time of hearing. It also states:

IMPORTANT NOTICE!

YOU MUST PROVIDE YOUR PHONE NUMBER TO THE APPEALS BUREAU AS SOON AS POSSIBLE. If you do not follow these instructions, the judge will not call you for the hearing.

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

Failure to Participate or Register for Appeal Hearing

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 us 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. 871 IAC 26.14(7)

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

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 concluded that claimant was eligible for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedure Act at Iowa Code § 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(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).

In this case, the appellant did not provide a telephone number to the Appeals Bureau prior to the scheduled hearing. The administrative law judge registered the appellant based on information found on the appeal letter. The appellant was not available at the telephone number provided on the appeal letter. The appellant is in default. The appeal should be dismissed.

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 August 17, 2021 (reference 01) unemployment insurance decision allowing benefits remains in effect as the appellant is in default and the appeal is dismissed.

A handwritten signature in black ink, appearing to read "Adrienne C. Williamson", is written over a yellow rectangular background.

Adrienne C. Williamson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

October 29, 2021
Decision Dated and Mailed

acw/scn