IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU

WILBERT DOMOND Claimant **TYSON FRESH MEATS INC** Employer	**APPEAL 24A-UI-09123-DZ-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 07/21/24** **Claimant: Respondent (6)**

Iowa Code § 96.3(5) – Benefit Duration - Business Closing
Iowa Code § 17A.12(3) – Default Decision

STATEMENT OF THE CASE:

Tyson Fresh Meats Inc, the employer/appellant,[1] appealed the Iowa Workforce Development (IWD) October 15, 2024 (reference 02) unemployment insurance (UI) decision. IWD found Mr. Domond eligible for extended UI benefits, as long as no other decision denies him UI benefits, because IWD concluded the employer is going out of business or has already gone out of business. On October 24, 2024, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to the employer and Mr. Domond at each of their last known addresses of record for a telephone hearing scheduled for November 12, 2024.

The employer did not call the toll-free number listed on the hearing notice at the time the hearing was scheduled to begin. Because the employer appealed but did not call in, the administrative law judge did not hold a hearing.

The administrative law judge concludes the employer is in default, its appeal is dismissed, and the decision finding Mr. Domond eligible for extended UI benefits based on a business closure, as long as no other decision denies him UI benefits, stays in place.

ISSUE:

Should the appeal be dismissed because the employer did not appear and participate in the appeal hearing?

FINDINGS OF FACT:

The DIAL UI Appeals Bureau properly notified the parties of the scheduled hearing for this appeal. The employer did not call the toll-free number listed on the hearing notice at the time scheduled for this appeal hearing. The employer did not request a postponement of the hearing before the hearing date. The employer did not call in before the record was closed 15 minutes after the hearing was scheduled to begin. The administrative law judge did not hold a hearing because the employer did not appear.

[1] Appellant is the person or employer who appealed.

The hearing notice lists the hearing date as November 12, 2024, and the hearing time as 10:00 a.m. Iowa time. The hearing notice also advises parties:

> **IMPORTANT NOTICE!**
> **YOU MUST CALL** the toll-free number...at the time of the hearing. You may call up to 5 minutes before the hearing. You are not the organizer – Do **NOT** press 2.
>
> 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. **Failure to participate in the hearing may result in dismissal of your appeal.**

The administrative law judge left the record open after the hearing start time to give the employer a reasonable opportunity to participate. Allowing additional time may prejudice the non-appealing party. Holding the employer in default for not appearing and participating during the grace period is reasonable considering the time allocated for each appeal hearing.

The UI decision concluded that Mr. Domond is eligible for extended UI benefits, as long as no other decision denies him UI benefits, because IWD concluded the employer is going out of business or has already gone out of business.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedures Act at Iowa Code § 17A.12(3) provides, in relevant 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. 26.14(7) provides:

> 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 provide in Iowa Code section 17A.12(3). The record 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 responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

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 judgment.[2] The hearing notice instructs the parties to call the toll-free number listed on hearing notice at the time the hearing is scheduled to begin.

The employer did not call in for the hearing and is in default. The appeal is dismissed and the IWD UI decision remains in force and effect.

DECISION:

The October 15, 2024 (reference 02) UI decision finding Mr. Domond eligible for extended UI benefits, as long as no other decision denies him UI benefits, remains in effect as the employer is in default and the appeal is DISMISSED.

Daniel Zeno
Administrative Law Judge

November 13, 2024
Decision Dated and Mailed

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[2] Iowa Code § 17A.12(3) and Iowa Admin. Code r. 26.14(7).

APPEAL RIGHTS. If you disagree with this decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

1) The name, address, and social security number of the claimant.
2) A reference to the decision from which the appeal is taken.
3) That an appeal from such decision is being made and such appeal is signed.
4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at https://www.legis.iowa.gov/docs/code/17A.19.pdf or by contacting the District Court Clerk of Court https:///www.iowacourts.gov/iowa-courts/court-directory/.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:
A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

1) El nombre, dirección y número de seguro social del reclamante.
2) Una referencia a la decisión de la que se toma la apelación.
3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en https://www.legis.iowa.gov/docs/code/17A.19.pdf o comunicándose con el Tribunal de Distrito Secretario del tribunal https:///www.iowacourts.gov/iowa-courts/court-directory/.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:
Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.