

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MERCEDES E CARR
Claimant

APPEAL 21A-UI-20002-JD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LOFFREDO GARDENS INC
Employer

**OC: 07/04/21
Claimant: Appellant (6)**

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.5 (2) a – Discharge for Misconduct
Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

The claimant/appellant, Mercedes Carr, filed an appeal from the September 1, 2021, (reference 04) unemployment insurance decision that concluded he was not eligible for unemployment insurance benefits. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for November 1, 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 she could be reached for the scheduled hearing. The employer followed the instructions on the hearing notice. The employer's representative was present and prepared to proceed with the hearing as scheduled. Because the claimant/appellant failed to follow the instructions on the notice of 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 parties were properly notified of the scheduled hearing for this appeal. The appellant failed to provide a telephone number at which she could be reached for the scheduled hearing as required by the hearing notice. She did not request a postponement of the hearing before the hearing date. Official notice of the Clear2there hearing control screen is taken to establish that appellant did not call or register online with the Appeals Bureau to provide a telephone number and/or name of a representative before the date and time the hearing was scheduled. The appellant did not call in before the record was closed, 15 minutes after the hearing was scheduled to begin.

The hearing notice instruction specifically advises parties in English and Spanish:

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 hearing notice lists the hearing date of November, 1, 2021 and the hearing time as 11:00 a.m. Iowa time. The back page of the hearing notice provides further warning in both languages:

You must register a phone number for each hearing by following the instructions on the front of this notice.

...

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 use 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.

The record was left open for a grace period of 15 minutes after the hearing start time to give the appellant a *reasonable* opportunity to participate. This reasonable amount of time is appropriate because if a hearing were conducted with the non-appealing party alone it would have likely concluded in 30 minutes or less. Allowing additional time would prejudice the non-appealing party for appearing in a timely manner. The 15 minute wait time is also a reasonable period to hold the record open as insufficient time would remain to conduct a quality due process hearing in the time allotted by the Appeals Bureau. Each two-party hearing is allowed 60 minutes and a one-party hearing allowed 30 minutes. Holding the appellant in default for failure to appear and participate during a 15 minute window after the hearing start time is entirely reasonable considering the time allocated for unemployment hearings.

The unemployment insurance decision had concluded that the claimant was not eligible for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedures 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.

The Agency rules at Iowa Admin. Code r. 26.14(7) provide:

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 judgement. Iowa Code § 17A.12(3) and Iowa Admin. Code r. 26.14(7). There hearing notice instructs the parties to:

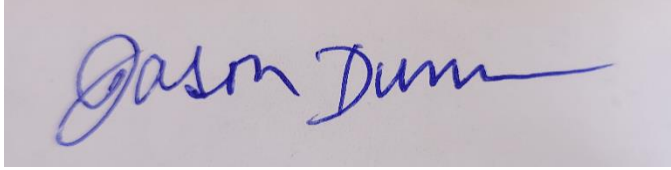
1. Read the hearing notice.
2. Register a telephone number where the party can be reached for the hearing.
3. Be available at that number at the date and time of the hearing.

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

Pursuant to the rule, the appellant may make a written request to the administrative law judge that the hearing be reopened, but must do so within 15 days after the mailing date of this decision. The written request should be mailed to the administrative law judge at the address listed at the end 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. The appellant also has the option to appeal the decision directly to the Employment Appeal Board, whose address is listed at the top right caption.

DECISION:

The September 1, 2021, (reference 04) unemployment insurance decision denying benefits remains in effect as the appellant is in default and the appeal is dismissed.



Jason Dunn
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

November 17, 2021 _____
Decision Dated and Mailed

jd/mn

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**TIFFANY R PETERSON
1305 3RD AVE SE
ALTOONA IA 50009 2008**

**AUGUSTA HOLDINGS
3900 WESTOWN PARKWAY
WEST DES MOINES IA 50266**

APPEAL 21A-UI-19980-JD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

REQUEST TO REOPEN AND APPEAL RIGHTS:

This Decision Shall Become Final, unless within fifteen (15) days from the mailing date below the administrative law judge's signature on the last page of the decision, you or any interested party:

(1) Make a request to reopen the hearing to the Appeals Bureau directly to:

**Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
or
Fax (515)478-3528**

(2) **OR YOU MAY** Appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
or
Fax (515)281-7191**

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:

The name, address, and social security number of the claimant.

A reference to the decision from which the appeal is taken.
That an appeal from such decision is being made and such appeal is signed.

The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your 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.

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**RICK S CALLENDAR
1416 REBECCA ST
SIOUX CITY IA 51103 2418**

**SEABOARD TRIUMPH FOODS, LLC
PAYROLL
5555 SEA BOARD TRIUMPH
SIOUX CITY IA 51111**

APPEAL 21A-UI-19981-JD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

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**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DALTON W DYKHUIZEN
407 30TH ST SE
CEDAR RAPIDS IA 52403-3008**

**S.A.T.O. ENTERPRISES INC
4934 FOXBOROUGH CT
BETTENDORF IA 52722**

APPEAL 21A-UI-19982-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

REQUEST TO REOPEN AND APPEAL RIGHTS:

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or
Fax (515)281-7191**

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SERVICE INFORMATION:

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**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DALTON W DYKHUIZEN
407 30TH ST SE
CEDAR RAPIDS IA 52403-3008**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 21A-UI-19983-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

REQUEST TO REOPEN AND APPEAL RIGHTS:

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Fax (515)281-7191**

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**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DALTON W DYKHUIZEN
407 30TH ST SE
CEDAR RAPIDS IA 52403-3008**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 21A-UI-19984-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

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4th Floor – Lucas Building
Des Moines, Iowa 50319
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UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DALTON W DYKHUIZEN
407 30TH ST SE
CEDAR RAPIDS IA 52403-3008**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 21A-UI-19985-JC-T

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**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

**JOSHUA SCARBOROUGH
APT 1
111 W MAIN ST
LA PORTE CITY IA 50651 1029**

**BERTCH CABINET LLC
JOHN MAST
PO BOX 2280
WATERLOO IA 50704**

APPEAL 21A-UI-19987-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

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**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

**JOSHUA SCARBOROUGH
APT 1
111 W MAIN ST
LA PORTE CITY IA 50651 1029**

**BERTCH CABINET LLC
JOHN MAST
PO BOX 2280
WATERLOO IA 50704**

APPEAL 21A-UI-19988-LJ-T

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SERVICE INFORMATION:

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ONLINE RESOURCES:

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**KATELYN M FRAZIER
726 LOUISA ST
BURLINGTON IA 52601 6331**

**BIG LOTS STORES INC
% TALX UCM SERVICES
PO BOX 283
SAINT LOUIS MO 63166**

APPEAL 21A-UI-19994-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

APPEAL RIGHTS:

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Des Moines, Iowa 50319
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**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**KATELYN M FRAZIER
726 LOUISA ST
BURLINGTON IA 52601 6331**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 21A-UI-19995-AD-T

**ADMINISTRATIVE LAW JUDGE
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**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**KATELYN M FRAZIER
726 LOUISA ST
BURLINGTON IA 52601 6331**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 21A-UI-19996-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

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Des Moines, Iowa 50319
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**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**NICHOLAS K FORD
3000 GRAND AVE APT 317
DES MOINES IA 50312-4223**

**HOWROYD WRIGHT EMPLOYMENT
AGENCY INC/APPLE 1 EMPLOYMENT
SERVICES
% TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283**

APPEAL 21A-UI-20037-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

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**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**WILLIAM T SWESTKA
19151 YORK AVE
CRESCO IA 52136-8582**

**CROELL INC
PAYROLL MANAGER
2010 KENWOOD AVE
NEW HAMPTON IA 50659**

APPEAL 21A-UI-20038-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

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**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

**BRITTNEY N DAVIS
UNIT 103H
5515 SE 14TH ST
DES MOINES IA 50320 1694**

**AEROTEK INC
C/O THOMAS & COMPANY
PO BOX 280100
NASHVILLE TN 37228**

**APPEAL 21A-UI-20049-LJ-T
ADMINISTRATIVE LAW JUDGE
DECISION**

REQUEST TO REOPEN AND APPEAL RIGHTS:

This Decision Shall Become Final, unless within fifteen (15) days from the mailing date below the administrative law judge's signature on the last page of the decision, you or any interested party:

(1) Make a request to reopen the hearing to the Appeals Bureau directly to:

**Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Or
Fax (515) 478-3528**

(2) **OR YOU MAY** Appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

***Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Or
Fax: (515)281-7191***

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:

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your 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.

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

**DUSTIN W ELROD
1511 13TH ST
AMES IA 50010 5205**

**AEROTEK INC
C/O THOMAS & COMPANY
PO BOX 280100
NASHVILLE TN 37228**

APPEAL 21A-UI-20051-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

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SERVICE INFORMATION:

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ONLINE RESOURCES:

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

**CHRISTOPHER A ANDORF
RM 129
3926 W AIRLINE HWY
WATERLOO IA 50703 9598**

**DAN DEERY MOTOR CO OF WATERLOO
PO BOX 99
CEDAR FALLS IA 50613**

APPEAL 21A-UI-20052-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

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ONLINE RESOURCES:

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