

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
Division of Administrative Hearings
Wallace State Office Building
Des Moines, Iowa 50319

Appeal Number: 11IWDUI208
OC: 5/15/11
Claimant: Appellant (6)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed Notice of Appeal, directly to the **Employment Appeal Board, 4TH Floor Lucas Building, Des Moines, Iowa 50319.**

KIM FRIESSEN
3914 SYLVIAN AVE.
SIOUX CITY, IA 51104-1352

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.

STATE CLEARLY

IOWA WORKFORCE DEVELOPMENT
REEMPLOYMENT SERVICES COORD.
430 EAST GRAND AVE.
DES MOINES, IA 50309

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.

JOE WALSH, IWD

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 the department. 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.

(Administrative Law Judge)

September 6, 2011

(Decision Dated & Mailed)

Iowa Code section 17A.12(3) – Default
871 Iowa Administrative Code 26.14(6)-(7) – Failure to Appear

STATEMENT OF THE CASE

The claimant filed an appeal of decision issued by Iowa Workforce Development (the Department) dated August 1, 2011, reference 03. A Notice of Telephone Hearing was mailed to all parties on August 22, 2011 setting a hearing date of September 2, 2011 at 11:30 AM. The notice contained instructions regarding how to participate in the telephone hearing. Neither the appellant nor any representative from Iowa Workforce Development (the Department) called in to participate in the hearing at the date and time indicated.

On August 25, 2011, Shanlyn Seivert from Iowa Workforce Development forwarded e-

mail correspondence from reemployment advisor Jean Holbrook indicating that the appellant decided that she wanted to attend reemployment services and did not want to pursue the appeal process with respect to this decision. The Department's regulations permit an appeal to be withdrawn at any time prior to the issuance of a decision upon the request of the appellant and with the approval of the presiding officer.¹ In this case, however, the appellant did not make any request to me that the appeal be withdrawn. If an appellant notifies personnel from the Department that he or she wishes to withdraw an appeal, the appellant should be notified that this request needs to be made directly to the administrative law judge. An oral request made to Department personnel that is then passed on to the administrative law judge is not enough to allow for a withdrawal.

The Iowa Administrative Procedure Act provides that if a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may enter a default decision.² Iowa Workforce Development regulations give the presiding officer discretion regarding whether to proceed with a hearing in the absence of one or more of the parties.³ In this case, a hearing was not held and a default decision is entered against the appellant.

DECISION

The appellant's appeal is dismissed. The Department shall take any action necessary to implement this decision.

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¹ 871 Iowa Administrative Code (IAC) 26.8(1).

² Iowa Code § 17A.12(3) (2011).

³ 871 Iowa Administrative Code 26.14(6)-(7).