

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RODNEY OLSON
Claimant

DAYBREAK FOODS INC
Employer

APPEAL 24A-UI-07598-JT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/28/24
Claimant: Appellant (6)

Iowa Code § 96.5(2)(a) & (d) – Discharge for Misconduct
Iowa Code § 17A.12(3) – Default Decision

STATEMENT OF THE CASE:

Rodney Olson (claimant) appealed the Iowa Workforce Development (IWD) August 19, 2024 (reference 01) decision. The decision disqualified the claimant for benefits and relieved the employer's account of charges for benefits, based on the deputy's conclusion the claimant was discharged on July 26, 2024 for failure to perform satisfactory work despite the ability to perform satisfactory work. The claimant requested an in-person appeal hearing.

On August 28, 2024, Iowa Department of Inspections, Appeals, and Licensing (DIAL) UI Appeals Bureau mailed a notice of hearing to the parties at their last-known address of record for an in-person appeal hearing set for 2:00 p.m. on September 18, 2024 at the Fort Dodge IowaWORKS Center. The claimant/appellant did not appear for the appeal hearing. The employer appeared through Alfredo Moreno. Based on the claimant's failure to participate in the hearing, the administrative law judge did not hold a hearing.

ISSUE:

Whether the appeal should be dismissed based on the claimant/appellant's failure to appear for and participate in the appeal hearing.

FINDINGS OF FACT:

Rodney Olson (claimant) is the appellant in this matter. The claimant requested an in-person hearing. DIAL UI Appeals Bureau properly notified the claimant of the scheduled in-person appeal hearing. The administrative law judge was available at the hearing sit for the hearing as scheduled. The claimant did not appear for or participate in the appeal hearing. The claimant did not request a postponement of the hearing. The claimant did not appear before the record closed 16 minutes after the scheduled start of the hearing. The administrative law judge did not hold a hearing because the claimant did not appear.

The August 19, 2024 (reference 01) decision disqualified the claimant for benefits and relieved the employer's account of charges for benefits, based on the deputy's conclusion the claimant

was discharged on July 26, 2024 for failure to perform satisfactory work despite the ability to perform satisfactory work.

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 (6) provides:

(6) If one or more parties which received notice for a contested case hearing fail to appear at the time and place of an in-person hearing, the presiding officer may proceed with the hearing. If the appealing party fails to appear, the presiding officer may decide the party is in default and dismiss the appeal. The hearing may be reopened if no decision has been issued and 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.

The claimant/appellant did not appear for the in-person hearing the claimant requested. The appellant is in default. The appeal is dismissed.

If the appellant disagrees with this decision, the appellant may appeal the decision pursuant to the instructions on the last page of this decision.

DECISION:

The claimant defaulted on the appeal. The appeal is dismissed. The August 19, 2024 (reference 01) decision remains in effect. That decision disqualified the claimant for benefits and relieved the employer's account of charges for benefits, based on the deputy's conclusion the claimant was discharged on July 26, 2024 for failure to perform satisfactory work despite the ability to perform satisfactory work.



James E. Timberland
Administrative Law Judge

September 19, 2024
Decision Dated and Mailed

scn

APPEAL RIGHTS. If you disagree with the 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:

**Employment Appeal Board
6200 Park Ave 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>.

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:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: 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 adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

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.