

Iowa Department of Inspections and Appeals  
Division of Administrative Hearings  
Wallace State Office Building  
Des Moines, Iowa 50319

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Mosie Hershberger	)	
Hershberger’s Construction, LLC.	)	
17701 45 <sup>th</sup> St.	)	Case No. 22IWDMM0007
Lime Springs, IA 52155	)	
	)	
Appellant,	)	
	)	
v.	)	<b>PROPOSED DEFAULT</b>
	)	<b>DECISION</b>
	)	
Iowa Workforce Development,	)	
	)	
Respondent.	)	

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**STATEMENT OF THE CASE**

The Appellant filed this appeal concerning a decision of the Iowa Workforce Development (IWD). On May 3, 2022, a Notice of Hearing was issued and sent to the Appellant. The Notice of Hearing set the appeal for a telephone hearing on June 14, 2022, at 9:00 a.m. central time and instructed the Appellant to call in to a toll-free telephone number on that date and time.

The Notice of Hearing warned: “Failure to appear and participate in the hearing may result in the entry of a default judgment.” The Notice also stated as follows: “The judge will wait five minutes after the time the hearing is scheduled to start to allow all parties to call in. If you have not called in by five minutes after the hearing is scheduled to start, the judge may enter a default judgment against you.” On the date and time set for the hearing, neither the Appellant nor any representative of the Appellant appeared to participate in the hearing by calling in to the toll-free telephone number within five minutes of the scheduled time of the hearing.

**APPLICABLE LAW AND DISCUSSION**


Section 17A.12(3) of the Iowa Code provides: “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, either enter a default decision or proceed with the hearing and make a decision in the absence of the party.” Iowa Code § 17A.12(3). Likewise, IWD administrative rules provide that the presiding officer may enter a default decision and dismiss the appeal if the appealing party “is unavailable for the hearing” Iowa Admin.

Code r. 871-26.14(7). Because the Appellant failed to appear and failed to participate in the telephone hearing, the entry of a default decision in this case is appropriate. The Appellant may request a new hearing by following the instructions under “Appeal Rights” below.

**ORDER**

The Appellant is in default and the appeal is dismissed. The Department shall proceed as if no appeal had been filed and shall take any action necessary to implement this decision.

Dated this 14<sup>th</sup> day of June, 2022.



Carla J. Hamborg  
Administrative Law Judge

cc:

Hershberger's Construction, LLC., c/o Mosie Hershberger (By Mail)  
Jeffrey Koncsol, IWD (By AEDMS)  
Lisa Gaeta, IWD (By AEDMS)  
Barbara Corson, IWD (By AEDMS)

**APPEAL RIGHTS**

This decision shall become the final agency action and the Appellant will not have a hearing on this appeal unless the Appellant asks to schedule a new hearing by filing a motion to vacate the default decision. A motion to vacate must be filed within fifteen (15) days by mail and must state in writing “good cause” for failing to attend the hearing. See Iowa Admin Code r. 871-26.8(3). “Good cause” is defined in Iowa Workforce Development rules “as an emergency circumstance that is beyond the control of the party and that prevents the party from being able to participate in the hearing.” Iowa Admin. Code r. 871-26.8(3). The motion to vacate must be filed with the presiding officer at the Administrative Hearings Division as follows:

--by delivery or mail: Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319.  
--by email: [adminhearings@dia.iowa.gov](mailto:adminhearings@dia.iowa.gov); or  
--by fax: (515) 281-4477.

A copy of the motion to vacate must also be sent to Iowa Workforce Development.

**Case Title:** HERSHBERGER'S CONSTRUCTION LLC V. IOWA WORKFORCE  
DEVELOPMENT  
**Case Number:** 22IWDM0007  
**Type:** Order

IT IS SO ORDERED.

A handwritten signature in black ink, reading "Carla Hamborg". The signature is written in a cursive style with a large initial "C" and a stylized "H".

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Carla Hamborg, Administrative Law Judge