

657—35.27(17A,272C) Default.

35.27(1) *Failure to appear.* 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 render a decision in the absence of the party.

35.27(2) *Motion for default.* Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

35.27(3) *Motion to vacate.* A default decision or a decision rendered on the merits after a party has failed to appear or participate in a contested case proceeding shall become final board action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or unless an appeal of a decision on the merits is timely initiated within the time provided by rule 657—35.30(17A,272C). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

35.27(4) *Appeal.* The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

35.27(5) *Proof of good cause.* Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion if a request to do so is included in that party's response.

35.27(6) *"Good cause" defined.* "Good cause," for purposes of this rule, shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.971.

35.27(7) *Appeal of decision on motion to vacate.* A decision by an administrative law judge granting or denying a motion to vacate is subject to appeal to the board within 20 days.

35.27(8) *Notice of hearing.* If a motion to vacate is granted and no timely appeal to the board has been filed, the presiding officer shall issue a rescheduling order setting a new hearing date and the contested case shall proceed accordingly.

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