

**685—4.23(17A) Default.**

**4.23(1)** If a party fails to appear or participate in a contested case hearing after proper service of notice, the presiding officer may, if no continuance is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

**4.23(2)** Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case hearing become final agency action unless, within 20 days after the mailing of the decision to the parties, a motion to vacate pursuant to subrule 4.23(3) is filed and served on all parties or, if the decision is a proposed decision within the meaning of Iowa Code section 17A.15(2), an appeal from the decision on the merits is filed within the time provided by rule 685—4.28(17A).

**4.23(3)** A motion to vacate may be filed only by a party who failed to appear for the hearing and against whom the decision was rendered. The motion must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear. 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 and filed and served with the motion.

**4.23(4)** Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown, in accordance with Iowa Rule of Civil Procedure 1.977. The burden of proof as to the existence of good cause is on the moving party. Adverse parties may, within ten days of the service of the motion and supporting affidavit(s) upon them, file a response to the motion. Adverse parties shall be allowed to conduct discovery as to the issue of the existence of good cause and to present evidence on the issue prior to a ruling on the motion, if a request to do so is included in that party's response.

**4.23(5)** The time for the filing of an intra-agency appeal from or petition for review of a decision for which a timely motion to vacate has been filed is stayed pending the issuance of the presiding officer's ruling on the motion to vacate.

[ARC 9025B, IAB 8/25/10, effective 9/29/10]