

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**NOLAN HUTCHESON  
2320 – 190<sup>TH</sup> ST  
GARNER IA 50438**

**MONSON & SONS INC  
216 – 5<sup>TH</sup> ST NW  
BRITT IA 50423-1400**

**APPEAL NO. 15A-UI-08956-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REQUEST TO REOPEN AND APPEAL RIGHTS:**

**This Decision Shall Become Final**, unless within 15 days from the mailing date below the administrative law judge's signature on the last page of the decision, you or any interested party:

(1) Make a request to reopen the record with the Appeals Bureau directly at:

**Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209**

***Fax (515) 478-3528***

**OR** (2) Appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

***Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319***

***Fax (515) 281-7191***

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) The grounds upon which such appeal is based.

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 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. It is important that you file your 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.

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**ONLINE RESOURCES:**

UI Appeals: <http://www.iowaworkforce.org/ui/appeals/index.html>

National Career Readiness Certificate through the Skilled Iowa Initiative: <http://skillediowa.org/>

Becoming a member employer through Skilled Iowa and utilizing internships: <http://skillediowa.org/>

Facts About Unemployment Handbook: <http://www.iowaworkforce.org/ui/handbook.htm>

Employer account access and information: <https://www.myiowaui.org/UITIPTaxWeb/>

<http://www.iowaworkforce.org/ui/uiemployers.htm>

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UNEMPLOYMENT INSURANCE APPEALS**

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**NOLAN HUTCHESON**  
Claimant

**MONSON & SONS INC**  
Employer

**APPEAL NO. 15A-UI-08956-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/23/14  
Claimant: Respondent (6)**

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Iowa Code § 17A.12(3) - Default Decision  
871 IAC 26.14(7) - Dismissal of Appeal on Default

**STATEMENT OF THE CASE:**

The employer/appellant filed a timely appeal from a representative's unemployment insurance decision dated August 6, 2015, (reference 05), that concluded the claimant was eligible for unemployment insurance benefits after a separation from employment with Monson & Sons. Notices of hearing were mailed to the parties' last-known addresses of record for a telephone hearing to be held at 10:00 a.m. on August 28, 2015. A review of the Appeals Bureau's conference call system indicates that the employer/appellant failed to respond to the hearing notice instructing it to provide a telephone number at which it could be reached for the hearing and consequently no hearing was held in this matter.

**ISSUE:**

The issue is whether the underlying decision should be affirmed and the appeal should be effectively dismissed based upon the employer/appellant's failure to participate in the hearing.

**FINDINGS OF FACT:**

The parties were properly notified of the scheduled hearing on this appeal. A Notice of Appeal and Hearing was mailed to both parties on August 18, 2015. There is no evidence suggesting the employer/appellant did not receive the hearing notice prior to the hearing scheduled on August 28, 2015.

The front page of the hearing notices states: "**The judge will not call you on the day of the hearing if you have not registered your phone number with the Appeals Bureau in Des Moines, Iowa as instructed below.**" This information can be found on both the front and the back of the hearing notice. The hearing notice instructions further advise the parties, "If you do not participate in the hearing because you do not register for the hearing, register late, or cannot be reached at the number you provided when the judge calls for the hearing, the appeal may be dismissed or decided based on other available evidence."

The employer/appellant failed to provide a telephone number at which it could be reached for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The representative's decision concluded that the claimant was eligible for unemployment insurance benefits.

**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. Likewise, Agency rule 871 IAC 26.14(7) provides that if the appealing party has not responded to a notice of telephone hearing by providing the Appeals Bureau with the names and telephone numbers of the persons who are participating in the hearing by the scheduled starting time of the hearing or is not available at the telephone number provided, the judge may decide the appealing party is in default and dismiss the appeal as provided in Iowa Code § 17A.12(3).

This rule does not provide exceptions for good intentions and/or a party contacting the Appeals Bureau within a reasonable amount of time after the hearing is scheduled. It can be assumed an appellant intends to participate in the hearing simply by the fact an appeal is filed, but their responsibility does not end there. All parties are required to follow the specific written instructions printed on the hearing notice. Due process requires notice and an opportunity to be heard, both of which were provided to the parties.

If the employer/appellant responds to the notice of hearing after the record has been closed, the administrative law judge shall not take the evidence of the late party. Instead, the administrative law judge shall inquire ex parte as to why the party was late in responding to the notice of hearing. For good cause shown, the record shall be reopened and cause further notice of hearing to be issued. The record shall not be reopened without a finding of good cause for the party's late response to the notice of hearing. 871 IAC 26.14(7)b. Furthermore, the rule states that failure to read or follow the hearing notice instructions shall not constitute good cause. 871 IAC 26.14(7)c.

The employer/appellant appealed the unemployment insurance decision but failed to participate in the scheduled appeal hearing. The employer/appellant has therefore defaulted on its appeal pursuant to Iowa Code § 17A.12(3) and 871 IAC 26.14(7), and the representative's decision remains in force and effect.

If the employer/appellant disagrees with this decision, a written request to reopen the record must be made to the administrative law judge within 15 days after the mailing date of this decision. The written request should be mailed to the administrative law judge at the address listed at the end of this decision and must explain the emergency or other good cause that prevented the employer/appellant from participating in the hearing at the scheduled time. The employer/appellant also has the option to appeal the decision directly to the Employment Appeal Board, whose address is listed at the beginning of the decision.

**DECISION:**

The representative's unemployment insurance decision dated August 6, 2015, (reference 05), is affirmed. The decision allowing benefits to the claimant remains in effect.

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Julie Elder  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

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Decision Dated and Mailed

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