

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ANTONIO TERRELL
Claimant

**THOMAS L CARDELLA & ASSOCIATES
INC**
Employer

APPEAL NO: 21A-UI-15038-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/17/20
Claimant: Appellant (6)

Iowa Code § 96.4(3) – Able & Available
Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

The claimant filed a July 2, 2021 late appeal from the August 14, 2020, reference 03, decision that denied benefits effective May 17, 2020, based on the deputy's conclusion that the claimant requested and was granted a leave of absence, was voluntarily unemployed, and was not available for work. A notice of hearing was mailed to the parties' last-known addresses of record for a telephone hearing to be held at 10:00 a.m. on August 27, 2021. There were four matters set for a consolidated hearing: 21A-UI-15038-JTT, 21A-UI-15039-JTT, 21A-UI-15040-JTT and 21A-UI-15041-JTT. All four matters concern the claimant. Only the present matter concerns the employer. The employer registered a telephone number for the hearing and was available through Myka Gilchrist. A review of the Appeals Bureau's conference call system indicates that the claimant/appellant failed to respond to the hearing notice instructions to register a telephone number at which the claimant could be reached for the hearing. Based upon the claimant/appellant's failure to participate in the hearing and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

ISSUE:

Should the appeal be dismissed based upon the claimant/appellant not participating in the hearing?

FINDINGS OF FACT:

The claimant is the appellant in this matter and in three companion appeal numbers. The claimant was properly notified of the appeal hearing set for 10:00 a.m. on August 27, 2021 through the hearing notice that was mailed to the claimant's last-known address of record on August 3, 2021. The claimant did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. The claimant did not comply with the hearing notice instructions to register a telephone number at which the claimant could be reached for the hearing. The claimant did not provide a telephone number in the claimant's appeal. The

claimant has not otherwise provided the Appeals Bureau with a telephone number since filing the appeal.

The August 14, 2020, reference 03, decision denied benefits effective May 17, 2020, based on the deputy's conclusion that the claimant requested and was granted a leave of absence, was voluntarily unemployed, and was not available for work. The claimant's appeal from the reference 03 decision is on its face late. The decision included an August 24, 2020 deadline for appeal. The claimant's online appeal was filed on July 2, 2021.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedures Act at Iowa Code § 17A.12(3) provides in pertinent part:

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 make a decision in the absence of the party. ... If a decision is rendered against a party who failed to appear for the hearing and the presiding officer is timely requested by that party to vacate the decision for good cause, the time for initiating a further appeal is stayed pending a determination by the presiding officer to grant or deny the request. If adequate reasons are provided showing good cause for the party's failure to appear, the presiding officer shall vacate the decision and, after proper service of notice, conduct another evidentiary hearing. If adequate reasons are not provided showing good cause for the party's failure to appear, the presiding officer shall deny the motion to vacate.

Iowa Administrative Code rule 871-26.14(7) provides:

(7) If a 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 presiding officer may proceed with the hearing. If the appealing party fails to provide a telephone number or is unavailable for the hearing, the presiding officer may decide the appealing party is in default and dismiss the appeal as provide in Iowa Code section 17A.12(3). The record may be reopened if the absent party makes a request to reopen the hearing in writing under subrule 26.8(3) and shows good cause for reopening the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

The claimant/appellant appealed the representative's decision but failed to participate in the hearing. The claimant/appellant has therefore defaulted on the appeal pursuant to Iowa Code §17A.12(3) and Iowa Admin. Code r. 871-24.14(7), and the representative's decision remains in force and effect.

DECISION:

The claimant defaulted on the appeal. The appeal is dismissed. The August 14, 2020, reference 03, decision that denied benefits effective May 17, 2020, based on the deputy's conclusion that the claimant requested and was granted a leave of absence, was voluntarily unemployed, and was not available for work, remains in effect.



James E. Timberland
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August 31, 2021
Decision Dated and Mailed

jet/mn