

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**BRAD A LATCH**  
Claimant

**APPEAL NO: 16A-UI-10401-JT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**YOUNG CONSTRUCTION**  
Employer

**OC: 08/21/16**  
**Claimant: Appellant (6)**

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

**STATEMENT OF THE CASE:**

Brad Latch filed an appeal from the September 15, 2016, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on an agency conclusion that Mr. Latch was discharged on August 23, 2016 for excessive unexcused absences after being warned. Mr. Latch requested an in-person hearing. A notice of hearing was mailed to the parties' last-known addresses of record for an in-person hearing to be held at 11:00 a.m. on October 26, 2016 at the Mason City Workforce Development Center. The hearing was to be consolidated with the hearing in Appeal Number 16A-UI-10402-JTT. Dan Young appeared on behalf of the employer. The claimant/appellant, Mr. Latch, did not appear 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:**

Claimant Brad Latch is the appellant in this matter and the companion appeal. Mr. Latch requested an in-person appeal hearing. Mr. Latch's last-known address of record is in Mason City. The employer has a business location in Mason City. Based on Mr. Latch's request for an in-person hearing, the Appeals Bureau set an in-person hearing for 11:00 a.m. on October 26, 2016 at the Mason City Workforce Development Center. On October 6, 2106, the Appeals Bureau mailed a hearing notice for each case to Mr. Latch. On October 26, 2016, the employer appeared for the hearing through Dan Young. Mr. Latch did not appear for the hearing he had requested. The employer and the administrative law judge waited for Mr. Latch until 11:32 a.m. At that time, the administrative law judge closed the record and dismissed the employer from his obligation to appear for the hearing. The administrative law judge remained at the Mason City Workforce Development Center until approximately 7:00 p.m. on October 26, 2016. Mr. Latch never appeared at the Workforce Development Center. Mr. Latch did not make contact either

with the Appeals Bureau or with the Mason City Workforce Development Center regarding the hearing he had missed. Mr. Latch had not requested postponement of the appeal hearing as required by the hearing notice.

The September 15, 2016, reference 01, decision disqualified Mr. Latch for benefits and relieved the employer's account of liability for benefits, based on an agency conclusion that Mr. Latch was discharged on August 23, 2016 for excessive unexcused absences after being warned.

#### **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.

The Agency rules at Iowa Admin. Code r. 871-26.14(6) provide:

26.14(6) In the event that one or more parties which have received notice for a contested case hearing fail to appear at the time and place of an in-person hearing, the presiding officer may proceed with the hearing. If the appealing party fails to appear, the presiding officer may decide the party is in default and dismiss the appeal. The hearing may be reopened if the absent party makes a request to reopen the hearing under subrule 26.8(3) and shows good cause for reopening the hearing.

- a. If an absent party arrives for an in-person hearing while the hearing is in session, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.
- b. If an absent party arrives for an in-person hearing after the record has been closed and after any party which had participated in the hearing has departed, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire ex parte as to the reason the party was late. For good cause shown, the presiding officer shall cause notice of hearing to be issued to all parties of record and reopen the record. The record shall not be reopened if the presiding officer does not find a good cause for the party's late arrival.

The claimant/appellant appealed the representative's decision but failed to participate in the hearing. The claimant/appellant has therefore defaulted on his appeal pursuant to Iowa Code §17A.12(3) and Iowa Admin. Code r. 871-24.14(6), and the representative's decision remains in force and effect.

If the claimant/appellant disagrees with this decision, pursuant to the rule, the claimant/appellant must make a written request to the administrative law judge that the hearing be reopened 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 claimant/appellant from participating in the hearing at its scheduled time and place.

**DECISION:**

The September 15, 2016, reference 01, decision is affirmed. The decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the August 23, 2016 separation, remains in effect.

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James E. Timberland  
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

jet/rvs