

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**SIMMIE ELMORE**  
Claimant

**APPEAL NO. 14A-UI-07310-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 07/06/14  
Claimant: Appellant (6)**

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Iowa Code § 17A.12(3) - Default Decision  
871 IAC 26.14(7) - Dismissal of Appeal on Default  
871 IAC 26.14(7)b - Late Call  
Iowa Code § 17A.12-3 - Non-Appearance of Party

**STATEMENT OF THE CASE:**

Simmie Elmore (claimant/appellant) filed an appeal from a representative's unemployment insurance decision dated July 15, 2014, (reference 02), which denied his request to backdate his claim prior to July 6, 2014. A notice of hearing was mailed to the party's last-known address of record for a telephone hearing to be held at 8:30 a.m. on August 8, 2014. A review of the Appeals Bureau's conference call system indicates that the claimant/appellant failed to respond to the hearing notice prior to the hearing to provide a telephone number at which he could be reached for the hearing so no hearing was held.

**ISSUE:**

The issue is whether good cause has been established to reopen the record, and if not, whether the underlying decision should be affirmed and the appeal should be effectively dismissed based upon the claimant/appellant's failure to participate in the hearing.

**FINDINGS OF FACT:**

The party was properly notified of the scheduled hearing on this appeal. The claimant/appellant received the hearing notice prior to the hearing scheduled on August 8, 2014. The claimant/appellant failed to contact the Appeals Bureau to provide a telephone number at which he could be reached for the hearing so no hearing was held. 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 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 claimant/appellant called the Appeals Bureau after the scheduled hearing because he failed to read and/or follow the hearing notice instructions.

The representative's decision denied the claimant/appellant's request to backdate his unemployment insurance claim prior to July 6, 2014.

**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 and 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 claimant/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.

In the case herein, the claimant/appellant has failed to establish the requisite good cause required to reopen the hearing record. Consequently, the claimant/appellant has therefore defaulted on his appeal pursuant to Iowa Code § 17A.12(3) and 871 IAC 26.14(7), and the representative's decision remains in force and effect.

**DECISION:**

The representative's unemployment insurance decision dated July 15, 2014, (reference 02), is affirmed. The decision denying the claimant's request to backdate his claim remains in effect.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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