

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**NATHANIEL FALLIIN**  
Claimant

**COMISKEY GLASS & GLAZING CO**  
Employer

**APPEAL NO: 19A-UI-0914-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/04/19**  
**Claimant: Respondent (6/R)**

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Iowa Code § 96.5(2)(a) – Discharge  
Iowa Code § 96.5(1) - Layoff  
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 employer filed a timely appeal from the December 6, 2019, reference 03, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was dismissed on September 8, 2019 due to staff reduction and elimination of his position, rather than for misconduct in connection with the employment. A notice of hearing was mailed to the parties' last-known addresses of record for a telephone hearing to be held at 11:00 a.m. on January 9, 2020. A review of the Appeals Bureau's conference call system indicates that the employer/appellant did not comply with the hearing notice instructions to register a telephone number at which a representative could be reached for the hearing. In addition, the employer was not available at the telephone number the employer had included in the employer's appeal letter. The claimant did not register or otherwise provide a telephone number for the appeal hearing. Based upon the employer/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 employer/appellant not participating in the hearing?

**FINDINGS OF FACT:**

The employer is the appellant in this matter. Paul Comiskey, President of Comiskey Glass & Glazing Company, signed the appeal letter. Mr. Comiskey had represented the employer at the associated December 4, 2019 fact-finding interview. The employer was properly notified of the appeal hearing set for 11:00 a.m. on January 9, 2020 through the hearing notice that was mailed to the employer's last-known address of record on December 13, 2019. The employer received the hearing notice, but did not comply with the hearing notice instructions to register a telephone number for the hearing. The employer's appeal letter included a telephone number

for the employer. At the time of the hearing, the administrative law judge attempted to reach Mr. Comiskey at the telephone included on the appeal letter. The administrative law judge spoke with Jamilla Davis. Ms. Davis advised that Mr. Comiskey had the hearing on his calendar, but was out of the office. The administrative law judge remained on hold while Ms. Davis telephoned Mr. Comiskey. Ms. Davis then returned to the line and advised the administrative law judge that Mr. Comiskey had responded that he would call her right back. The administrative law judge advised Ms. Davis that the administrative law judge would leave the hearing record open until 11:15 a.m., but would then dismiss the appeal and move on to other business. The administrative law judge provided Ms. Davis with the administrative law judge's name, the local telephone number for the Appeals Bureau, and the toll-free number for the Appeals Bureau so that Mr. Comiskey could contact the administrative law judge to proceed with the hearing. At 11:16 a.m., in the absence of any response from the employer, the administrative law judge closed the hearing record.

The December 6, 2019, reference 03, decision allowed benefits to the claimant provided he was otherwise eligible and held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was dismissed on September 8, 2019 due to staff reduction and elimination of his position, rather than for misconduct in connection with the employment.

#### **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.

Iowa Administrative Code rule 871-26.8(4) provides:

(4) A request to reopen a record or vacate a decision must be made in writing. If necessary, the presiding officer may hear, ex parte, additional information regarding the request for reopening. The granting or denial of such a request may be used as grounds for appeal to the employment appeal board of the department of inspections and appeals upon the issuance of the presiding officer's final decision in the case.

The employer/appellant appealed the representative's decision but failed to participate in the hearing. The employer/appellant has therefore defaulted on its 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.

If the employer/appellant disagrees with this decision, pursuant to the rule, the employer/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 good cause that prevented the employer/appellant from participating in the hearing at its scheduled time.

The employer's appeal from the December 6, 2019, reference 03, decision appears to argue that the claimant is not available for work within the meaning of the law and includes a statement that the claimant was laid off. In other words, the employer appears to be not so much concerned about the separation from the employment as about the claimant's availability for work subsequent to the separation. Based on the language and impact of the December 6, 2019, reference 03, decision, only the separation and issues related to the separation were set for hearing on January 9, 2019. Whether the claimant has been available for work since the separation was not an issue set for hearing on January 9, 2019 and not an issue that administrative law judge would have had legal authority to address as part of the January 9, 2019 appeal hearing. Though the appeal from the December 6, 2019, reference 03, decision is being dismissed based on the employer's default on the appeal, the administrative law judge will include a remand (send) the matter to the Benefits Bureau for adjudication of the availability issue the employer has raised and for entry of a decision regarding the claimant's availability for work.

**DECISION:**

The December 6, 2019, reference 03, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was dismissed on September 8, 2019 due to staff reduction and elimination of his position, rather than for misconduct in connection with the employment, remains in effect.

This matter is remanded to the Benefits Bureau for a fact-finding interview *and entry of an appealable decision* concerning whether the claimant has been able to work and available for work within the meaning of the law since the September 8, 2019 separation referenced in the December 6, 2019, reference 03, decision.

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James E. Timberland  
Administrative Law Judge  
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Decision Dated and Mailed

jet/rvs