

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

GENA M PEEL GARCIA
Claimant

APPEAL NO. 21A-UI-12625-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA CITY COMMUNITY SCHOOL DIST
Employer

OC: 06/07/20
Claimant: Appellant (6)

Iowa Code Section 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 timely appeal from the May 5, 2021, reference 02, decision that denied benefits effective October 11, 2020, based on the deputy's conclusion that the claimant was not partially unemployed within the meaning of the law. A notice of hearing was mailed to the parties' last-known addresses of record for a telephone hearing to be held at 2:00 p.m. on August 27, 2021. The claimant was not available at the number provided for the appeal and did not participate. The employer was available through Lyndsee Detra.

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. This matter was originally set for July 30, 2021, but was rescheduled at the claimant's request. The claimant has not complied with the hearing notice instructions to register a telephone number for the appeal hearing. The claimant provided a telephone number in her July 29, 2021 reschedule request. That number is the only telephone number the claimant has provided in connection with the appeal. The administrative law judge used that number on July 29, 2021 to speak directly with the claimant regarding her reschedule request.

The hearing was rescheduled to August 27, 2021. The claimant was properly notified of the rescheduled appeal hearing set for 2:00 p.m. on August 27, 2021 through the hearing notice that was mailed to the claimant's last-known address of record on August 2, 2021. The claimant did not participate in the hearing or request a postponement of the hearing as required by the

hearing notice. Because the claimant had not registered a telephone number pursuant to the hearing notice instructions, the administrative law judge attempted to reach the claimant at the number she had provided in her July 29, 2021 reschedule request. The administrative law judge made two attempts to reach the claimant. On each attempt, the claimant did not answer. On each attempt, the administrative law judge left a voicemail message for the claimant. The claimant has not responded to the messages and has not otherwise made herself available for the rescheduled hearing.

The May 5, 2021, reference 02, decision denied benefits effective October 11, 2020, based on the deputy's conclusion that the claimant was not partially unemployed within the meaning of the law.

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 May 5, 2021, reference 02, decision that denied benefits effective October 11, 2020, based on the deputy's conclusion that the claimant was not partially unemployed within the meaning of the law, remains in effect.



James E. Timberland
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September 1, 2021
Decision Dated and Mailed

jet/scn