

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSE RIVAS
Claimant

APPEAL NO. 14A-UI-06245-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 05/11/14
Claimant: Appellant (6)

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

STATEMENT OF THE CASE:

The claimant appealed a representative's May 30, 2014 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he was discharged for disqualifying reasons. Notices of hearing were mailed to the parties' last-known addresses of record informing them a telephone hearing would be held on July 10 at 11:30 a.m. A review of the Appeals Bureau's conference call system shows the claimant/appellant moved and did not leave a forwarding address. He did not provide a telephone number at which he could be reached for the hearing. He did not participate in the hearing. Shannon Wehr appeared on the employer's behalf. Anna Pottebaum was available to interpret the hearing.

ISSUE:

Should the appeal be dismissed when the claimant/appellant does not participate in the hearing?

FINDINGS OF FACT:

Hearing notices were mailed to the parties' last-known addresses of record. The claimant/appealed failed to provide a telephone number at which he could be reached for the hearing. He did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The representative's May 30, 2014 determination disqualified the claimant from receiving benefits.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedures 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. The statute further states that if a party makes a timely request to vacate the decision and shows

good cause for failing to appear, the judge shall vacate the decision and conduct another hearing.

The Agency rules at 871 IAC 26.14(7) provide 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). The record may be reopened if the absent party makes a request to reopen the hearing and shows good cause for reopening the hearing. The rules further state that failure to read or follow the instructions on the notice of hearing is not good cause for reopening the record. 871 IAC 26.14(7)c.

The claimant/appellant appealed the unemployment insurance decision but failed to participate in the hearing. The claimant/appellant defaulted on his appeal. Based on Iowa Code § 17A.12(3) and 871 IAC 24.14(7), the May 30 determination remains in full force and effect.

If the claimant/appellant disagrees with this decision, a request must be made 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.

DECISION:

The representative's May 30, 2014 determination (reference 01) is affirmed. As of May 11, 2014, the claimant is disqualified from receiving unemployment insurance benefits. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-242-5144

Decision Dated and Mailed

dlw/css