

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIM R JOHNSON
Claimant

FORREST AND ASSOCIATE INC
Employer

APPEAL 17A-UI-00507-CL
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/25/16
Claimant: Appellant (6)

Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(6) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

Claimant/appellant filed an appeal from the January 5, 2017, (reference 01) unemployment insurance decision that concluded claimant was not eligible for unemployment insurance benefits after a separation from employment. Notice of hearing was mailed to the parties' last known addresses of record for a hearing scheduled for 1:00 p.m. on February 2, 2017, in Des Moines, Iowa. The appellant failed to respond to the hearing notice and appear for the scheduled hearing and no hearing was held.

ISSUE:

Should the appeal be dismissed based on the appellant's failure to appear and participate?

FINDINGS OF FACT:

The parties were properly notified of the scheduled in-person hearing for this appeal at 1000 East Grand Avenue, Des Moines, Iowa on February 2, 2017. The appellant failed to appear for the scheduled in-person hearing or request a postponement of the hearing as required by the hearing notice so no hearing was held. The hearing notice instruction specifically advises, "You must be prepared to present your case at the time specified in this notice." As a *courtesy* to the appellant the record was left open for a minimum grace period of 30 minutes after the hearing start time to give the appellant a *reasonable* opportunity to participate. Allowing additional time would prejudice the non-appealing party for appearing in a timely manner, especially in for an in-person hearing they did not request. Holding the appellant in default for failure to appear and participate during a 30-minute window after the hearing start time is reasonable.

The unemployment insurance decision had concluded that the claimant was disqualified for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedure 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.** (Emphasis added.)

Iowa Admin. Code r. 871-26.14(6) provides:

(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.

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.** (Emphasis added.)

The Iowa Supreme Court has opined that a default should not be set aside for ordinary negligence or want of ordinary care. **Defaults should not be set aside where the movant ignores plain instruction with ample opportunity to comply.** See *Houlihan v. Emp't Appeal Bd.*, 545 N.W.2d 863 (Iowa 1996) (emphasis added.). Here the clear directive is to read the hearing notice and appear at the date and time of the hearing. Due process requires notice and an opportunity to be heard, both of which were provided to each party. *The rule does not provide exceptions for good intentions, misread instructions and/or a party appearing within a 'reasonable' or certain amount of time after the hearing is scheduled.* It is assumed an appellant intends to participate in the hearing simply by the fact that an appeal is filed, but the appellant's responsibility does not end there. Each party is required to follow the prominent specific written instructions to appear at the place, date and time printed on the hearing notice. The appellant filed the appeal and is held solely responsible for going forward with the case in a prompt and deliberate manner. The rule holds an appellant in default if not present *at the start* of hearing. As a courtesy, appellant was granted an additional 15-minute grace period not required by statute or rule. Here, notwithstanding notice, opportunity and additional time, the appellant failed to prosecute the case at the appointed place, date and time without providing a good-cause reason for the delay or failure to do so. Accordingly the appellant is in default and the appeal shall be dismissed. Iowa Code § 17A.12(3) and Iowa Admin. Code r. 24.14(6). The unemployment insurance decision remains in force and effect.

Pursuant to the rule, the appellant may 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 appellant from participating in the hearing at its scheduled time. The appellant also has the option to appeal the decision directly to the Employment Appeal Board at the address listed in the caption appeal rights information.

DECISION:

The January 5, 2017, (reference 01) unemployment insurance decision denying benefits remains in effect as the appellant is in default.

Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed

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