

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JEREMIAH T TUZZIO
Claimant

OZARK AUTOMOTIVE DISTRIBUTORS INC
Employer

APPEAL 16A-UI-13294-JC
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/20/16
Claimant: Appellant (6)

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

STATEMENT OF THE CASE:

An appeal was filed from an unemployment insurance decision dated December 13, 2016 (reference 03) that denied benefits based upon the claimant's disciplinary suspension. Notice of the hearing was mailed to the parties' last-known addresses of record, for an in-person hearing in Des Moines, Iowa to be held at 9:00 a.m. on January 18, 2017. The claimant/appellant failed to respond to the hearing notice instruction and appear for the hearing. A thirty minute grace period was extended as a courtesy to the claimant before the record was closed. The claimant/appellant did not appear or contact the Appeals Bureau. No request for postponement was made and no hearing was held.

ISSUE:

Should the appeal be dismissed based upon the appellant not being available to participate in the scheduled hearing?

FINDINGS OF FACT:

The party was properly notified of the scheduled hearing on this appeal. The appellant, Jeremiah T. Tuzzio, failed to respond to the hearing notice instruction and appear for the hearing nor did he request a postponement of the hearing as required by the hearing notice. The administrative law judge checked with Iowa Workforce Development staff to see if the claimant had checked in or contacted the office before closing the record. The record was held open 30 minutes to give the claimant a chance to appear, or alternately, contact the Appeals Bureau.

The agency's decision 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 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 Iowa Admin. Code r. 26.14(7) provide:

If a party is unavailable for the hearing, the presiding officer 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 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 available, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire ex parte as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

The appellant, Jeremiah T. Tuzzio, appealed the unemployment insurance decision but failed to be available to participate in the scheduled hearing. The appellant has therefore defaulted on his appeal pursuant to Iowa Code § 17A.12(3) and Iowa Admin. Code r. 871-24.14(7), and the decision remains in full force and effect.

If the appellant disagrees with this decision, a request to reopen the record must be made to the administrative law judge within 15 days after the mailing date of this decision. The 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 the scheduled time.

DECISION:

The unemployment insurance decision dated December 13, 2016 (reference 03) denying benefits remains in effect. The appellant is in default and the appeal is dismissed.

Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

Decision Dated and Mailed

jlc/rvs