

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT T SKINNER
Claimant

APPEAL NO: 17A-UI-03274-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

**OC: 02/19/17
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:

Scott Skinner filed an appeal from the March 14, 2017, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Mr. Skinner was discharged on February 23, 2017 for conduct not in the best interest of the employer. 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 April 18, 2017. Amanda Lange of Talx/Equifax Workforce Solutions appeared, as did employer witness Paula Davis. Claimant Scott Skinner was initially available for the hearing, but left the hearing shortly after Ms. Davis' testimony began. 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:

Claimant Scott Skinner is the appellant in this matter. On March 27, 2017, the Appeals Bureau mailed a hearing notice to the parties at their last-known address of record to provide appropriate notice of the appeal hearing set for 11:00 a.m. on April 18, 2017. On March 29, 2017, Mr. Skinner registered a telephone number where he could be reached for the hearing. At the time set for the hearing, the administrative law judge reached Mr. Skinner at the number he had registered and Mr. Skinner joined the conference call hearing. The administrative law judge also added Amanda Lange of Talx/Equifax Workforce Solutions appeared, as did employer witness Paula Davis to the conference call hearing. After the administrative law judge concluded the opening statement and placed Mr. Skinner and Ms. Davis under oath, the administrative law judge commenced taking the testimony of Ms. Davis. Within a couple minutes after commencing Ms. Davis' testimony, Mr. Skinner disconnected from the hearing. The Clear2There recording system immediately alerted the administrative law judge to Mr. Skinner's departure from the hearing. The administrative law judge had Ms. Lange and

Ms. Davis stand by while the administrative law judge made four attempts to reach Mr. Skinner and to reconnect Mr. Skinner to the hearing. On each attempt to reach Mr. Skinner, Mr. Skinner did not answer and the administrative law judge left a voice mail message for Mr. Skinner. The administrative law judge made his fourth and final attempt to reach Mr. Skinner at 11:30 a.m. The administrative law judge then closed the record at 11:31 a.m. and excused Ms. Lange and Ms. Davis from the hearing. As of submission of this decision at 11:55 a.m. on April 18, 2017, neither the Appeals Bureau nor the administrative law judge had heard from Mr. Skinner.

The March 14, 2017, reference 01, decision disqualified Mr. Skinner for benefits and relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Mr. Skinner was discharged on February 23, 2017 for conduct not in the best interest of the employer.

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.

The Agency rules at Iowa Admin. Code r. 871-26.14(7) provide:

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 provided in Iowa Code section 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 on the telephone line, 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 claimant/appellant appealed the representative's decision but failed to participate in the hearing. The claimant/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 representative's decision remains in force and effect.

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

DECISION:

The March 14, 2017, reference 01, decision is affirmed. The decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that the claimant was discharged on February 23, 2017 for conduct not in the best interest of the employer, remains in effect.

James E. Timberland
Administrative Law Judge
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Decision Dated and Mailed

jet/rvs