

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DON L LENNIE

Claimant

APPEAL NO: 16A-UI-11457-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC

Employer

OC: 09/25/16

Claimant: Appellant (6)

Iowa Code § 17A.12(3) – Default Decision

Iowa Admin. Code Rule 871-26.14(7) – Dismissal of Appeal on Default & Reopening of Record

STATEMENT OF THE CASE:

Claimant Don Lennie filed an appeal from the October 19, 2016, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on an agency conclusion that Mr. Lennie was discharged on September 22, 2016 for misconduct in connection with the employment. 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 November 7, 2016. The employer was available for the hearing through Kelly Kaster, Human Resources Director. A review of the Appeals Bureau's conference call system indicates that the claimant/appellant, Mr. Lennie, failed to respond to the hearing notice instructions to provide a telephone number at which he could be reached for the hearing. Mr. Lennie contacted the Appeals Bureau after the record had closed and the employer had been dismissed, but provided an erroneous telephone number. 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?

Whether Mr. Lennie's late call to the Appeals Bureau provided good cause to reopen the hearing record.

FINDINGS OF FACT:

Claimant Don Lennie is the appellant in this matter. Mr. Lennie was properly notified of the November 7, 2016 11:00 a.m. appeal hearing through notice that was mailed to his last known address of record on October 25, 2016. Mr. Lennie failed to provide a telephone number at which he could be reached for the hearing. The employer was available through Kelly Kaster, Human Resources Director. Mr. Lennie did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. At 11:15 a.m., the administrative law judge closed the hearing record and dismissed the employer from the hearing. At 11:33 a.m., Mr. Lennie telephoned the Appeals Bureau and provided a telephone

number where the administrative law judge could reach him: 515-683-5790. The administrative law judge immediately attempted to reach Mr. Lennie at the number he provided. The administrative law judge made four attempts to reach Mr. Lennie between 11:33 a.m. and 11:38 a.m. Mr. Lennie did not answer at that number. There was no answering machine connected to the number. On each attempt to reach Mr. Lennie, the Clear2There system eventually returned a message that there was no answer. As it turns out, Mr. Lennie had provided the Appeals Bureau with an erroneous area code. The correct area code was 641.

When the administrative law judge attempted to reach Mr. Lennie at 641-683-5790, the administrative law judge was able to make contact with Mr. Lennie. At that point, it was 11:58 a.m. Mr. Lennie confirmed that he had not registered a number for the appeal hearing prior to 11:33 a.m. on November 7, 2016. Mr. Lennie confirmed timely receipt of the hearing notice. Mr. Lennie stated that he had assumed that he did not need to register a telephone number for the appeal hearing because he had provided a number for the fact-finding interview. The October 25, 2016 appeal hearing notice contained the date and time of the hearing, along with the following information:

You must register for the hearing immediately!

You must register your phone number and the name(s) and phone number(s) of any witness(es) with the Appeals Bureau. If you do not register, the judge will not be able to call you or your witness(es) for the hearing.

The hearing notice provided a telephone number Mr. Lennie could call to register a number for the hearing. The hearing notice also provided instructions for registering a number for the hearing online.

The October 19, 2016, reference 01, decision disqualified Mr. Lennie for benefits and relieved the employer's account of liability for benefits, based on an agency conclusion that Mr. Lennie was discharged on September 22, 2016 for misconduct in connection with the employment.

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) 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 as scheduled. The claimant's failure to read and follow the instructions on the notice of hearing does not constitute good cause for reopening the record. See Iowa Administrative Code rule 871-26.14(7)(c). The claimant/appellant has therefore defaulted on his appeal pursuant to Iowa Code §17A.12(3) and Iowa Administrative Code rule 871-24.14(7), and the representative's decision remains in force and effect.

DECISION:

The October 19, 2016, 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 an agency conclusion that the claimant was discharged on September 22, 2016 for misconduct in connection with the employment, remains in effect.

James E. Timberland
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Decision Dated and Mailed

jet/rvs