

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DUSTIN K RUNYON
Claimant

APPEAL NO. 15A-UI-01768-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 01/18/15
Claimant: Appellant (6)

Iowa Code § 17A.12(3) – Default Decision
871 IAC 26.14(7) – Dismissal of Appeal on Default
871 IAC 26.14(7)(b) and (c) – Good Cause to Reopen Hearing

STATEMENT OF THE CASE:

The claimant appealed a representative's February 5, 2015 determination (reference 01) that disqualified him from receiving benefits and held the employers' account exempt from charge because he had been 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 March 9, 2015, at 10:30 a.m. A review of the Appeals Bureau's conference call system shows the appellant was not available at the telephone number provided for the hearing and did not participate in the hearing. Dustin Lauver appeared on the employer's behalf.

After the hearing had been closed and the employer had been excused, the claimant contacted the Appeals Bureau and requested that the hearing be reopened.

ISSUES:

Is there good cause to reopen the hearing?

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

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The appellant was not available at the telephone number provided for the hearing. He did not participate at the scheduled hearing or request a postponement of the hearing as required by the hearing notice. Almost an hour after the hearing was scheduled, the claimant contacted the Appeals Bureau to participate at the hearing. The claimant requested that the hearing be reopened because he had been working and was unable participate at the scheduled hearing. He called when he had a break. The claimant did not read the hearing notice instructions to learn he could ask for a postponement if he had conflict.

The representative's February 5, 2015 determination concluded the claimant was not qualified to receive 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 rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c).

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 did not establish good cause to reopen the hearing. The claimant appealed the representative's February 5, 2015 determination but failed to participate in the hearing. The claimant defaulted on his appeal. Based on Iowa Code § 17A.12(3) and 871 IAC 24.14(7), the representative's February 5, 2015 determination remains in full force and effect.

DECISION:

The claimant's request to reopen the hearing is denied. The representative's February 5, 2015 determination (reference 01) is affirmed. As of January 18, 2015, 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
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Decision Dated and Mailed

dlw/pjs