

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

MARIO M GRIFFIN
Claimant

APPEAL NO: 19A-UI-01947-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAILOR HURLEY CONSTRUCTION INC
Employer

OC: 02/03/19
Claimant: Appellant (6)

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

STATEMENT OF THE CASE:

Mario Griffin filed a timely appeal from the February 27, 2019, reference 02, decision that held he was disqualified for benefits and the employer's account would not be charged for benefits, based on the deputy's conclusion that Mr. Griffin was discharged on February 7, 2019 for violation of a known company rule. Mr. Griffin requested an in-person hearing. A notice of hearing was mailed to the parties' last-known addresses of record for an in-person hearing to be held at 9:00 a.m. on April 8, 2019 at the Waterloo IowaWORKS. Employer representative Colin Hurley appeared at the Waterloo IowaWORKS for the hearing. Mr. Griffin did not appear for the hearing as scheduled. 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 Mario Griffin is the appellant in this matter. At the time Mr. Griffin filed his appeal, he requested an in-person hearing. Based on Mr. Griffin's request, an in-person hearing was set for 9:00 a.m. on April 8, 2019 at the Waterloo IowaWORKS center, 3420 University Avenue, Suite A, Waterloo, Iowa. Mr. Griffin was properly notified of the appeal hearing through the hearing notice that was mailed to his last-known address of record on March 22, 2019. Mr. Griffin did not appear for or participate in the appeal hearing as scheduled. The employer appeared through Colin Hurley. The administrative law judge had the employer stand by until 9:17 a.m. to afford Mr. Griffin additional reasonable opportunity to appear and participate in the appeal hearing. When Mr. Griffin did not appear by 9:17 a.m., the administrative law judge

closed the hearing record and dismissed the employer from the hearing. Mr. Griffin had not requested a postponement of the hearing as required by the hearing notice.

The February 27, 2019, reference 02, decision held that Mr. Griffin was disqualified for benefits and the employer's account would not be charged for benefits, based on the deputy's conclusion that Mr. Griffin was discharged on February 7, 2019 for violation of a known company rule.

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(6) provides:

26.14(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. If the appealing party fails to appear, the presiding officer may decide the party is in default and dismiss the appeal.

The claimant/appellant appealed the representative's decision, but failed to participate in the appeal hearing as scheduled. Based on that failure to appear as scheduled for the in-person hearing, the claimant/appellant defaulted on his appeal pursuant to Iowa Code §17A.12(3) and Iowa Admin. Code r. 871-24.14(7).

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 good cause that prevented the claimant/appellant from participating in the hearing at its scheduled time.

DECISION:

The February 27, 2019, reference 02, decision that held the claimant was disqualified for benefits and the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant was discharged on February 7, 2019 for violation of a known company rule, remains in effect.

James E. Timberland
Administrative Law Judge
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Decision Dated and Mailed

jet/rvs