

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

COLTEN J HENRY
Claimant

APPEAL NO: 14A-UI-08169-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AGRI STAR MEAT & POULTRY LLC
Employer

OC: 07/13/14
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:

Colten Henry filed an appeal from the July 29, 2014, reference 01, unemployment insurance decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that he had been discharged for misconduct. Mr. Henry requested an in-person hearing. Notices of hearing were mailed to the parties' last-known addresses of record for a telephone hearing to be held the Decorah Workforce Development Center at 2:00 p.m. on October 21, 2014. Mr. Henry did not appear for the hearing and did not otherwise respond to the hearing notice. The employer was available through Laura Roney and Karina Hillman. Based upon the 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:

The parties were properly notified of the scheduled hearing on this appeal. The claimant/appellant, Colten Henry, requested an in-person hearing and then failed to appear for the hearing he had requested. Mr. Henry did not respond at all to the hearing notice and did not request postponement of the hearing as required by law.

The July 29, 2014, reference 01 unemployment insurance decision disqualified Mr. Henry for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that Mr. Henry had been discharged for misconduct.

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(6) provide:

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 hearing 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 arrives for an in-person hearing while the hearing is in session, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If an absent party arrives for an in-person hearing after the record has been closed and after any party which had participated in the hearing has departed, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire ex parte as to the reason the party was late. For good cause shown, the presiding officer shall cause notice of hearing to be issued to all parties of record and reopen the record. The record shall not be reopened if the presiding officer does not find a good cause for the party's late arrival. 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 appellant disagrees with this decision, pursuant to the rule, the 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 appellant from participating in the hearing at its scheduled time.

DECISION:

The Claims Deputy's July 29, 2014, reference 01, unemployment insurance decision is affirmed. The decision that disqualified the claimant for benefits and that relieved the employer of liability for benefits remains in effect.

James E. Timberland
Administrative Law Judge
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Iowa Workforce Development
1000 East Grand Avenue
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Decision Dated and Mailed

jet/pjs