

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RACHEL J EBERHARDT
Claimant

APPEAL NO. 15A-UI-08095-LDT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 08/10/14

Claimant: Respondent (6)

Iowa Code § 17A.12(3) – Default Decision
871 IAC 26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

An appeal was filed from a representative's unemployment insurance decision dated July 15, 2015 (reference 04) that concluded Rachel J. Eberhardt (claimant/respondent) was eligible for unemployment insurance benefits in conjunction with her employment with Advance Services, Inc. (employer/appellant). Notices of hearing were mailed to the parties' last-known addresses of record for a telephone hearing to be held at 1:00 p.m. on August 20, 2015. A review of the Appeals Bureau's conference call system indicates that the employer/appellant failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. In fact, the employer's representative received the hearing notice and responded by sending a statement to the Appeals Bureau indicating that the employer was not going to participate in the hearing. Based on 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 on the employer/appellant not participating in the hearing?

FINDINGS OF FACT:

The employer/appellant was properly notified of the scheduled hearing on this appeal. The employer/appellant failed to provide a telephone number at which the appellant could be reached for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The employer asserted that it was not participating in the hearing "due to judge bias." No facts were provided to support this allegation.

The representative's decision concluded that the claimant/respondent was eligible for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedure 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.

Agency rule at 871 IAC 26.14(7) provides:

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.

If a party believes that an administrative law judge has bias in a case, that party may seek to have the judge recuse himself or herself by filing an affidavit asserting bias and setting forth the basis for that assertion. Iowa Code § 17.17(8); Rule 871 IAC 26.7. The undersigned administrative law judge has no personal knowledge regarding this case; the only information used in reaching the conclusion is that information available in the administrative file. The administrative law judge has no personal interest regarding either the claimant or the employer that could be affected by the outcome of this case, and has no personal sympathy toward or

animus against either party. Rather, the administrative law judge only applies the applicable law and burden of proof to weigh the sufficiency of the evidence and to reach an appropriate legal conclusion. The fact that the administrative law judge may not give much weight to second-hand information that might be provided by the employer compared to first-hand information that might be provided by a claimant does not amount to bias, but is proper application of the legal standards. The employer has not provided any basis for its assertion of bias, and has not established that there is either actual bias or a bona fide appearance of bias. The employer's assertion is without merit.

The employer/appellant appealed the representative's decision but failed to participate in the hearing. The employer did not present a legally excusable basis to prevent a default on the appeal. The employer/appellant has therefore defaulted on its appeal pursuant to Iowa Code § 17A.12(3) and Rule 871 IAC 24.14(7), and the representative's decision remains in force and effect.

If the employer/appellant disagrees with this decision, a written request to reopen the record must be made to the administrative law judge 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 the scheduled time. Alternatively, the appellant also has the option to appeal the decision directly to the Employment Appeal Board, whose address is listed on the cover page of this decision.

DECISION:

The representative's decision (reference 04) dated July 15, 2015 is affirmed. The decision allowing benefits remains in effect.

Lynette A. F. Donner
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed

ld/pjs