

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JENNIFER FINGER
Claimant

ADVANCE SERVICES INC
Employer

APPEAL NO: 20A-UI-07979-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/15/19
Claimant: Appellant (6)

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

The claimant, Jennifer Finger, filed a late appeal from the December 31, 2019, reference 01, decision that held she was disqualified for benefits and the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on December 9, 2019 without good cause attributable to the employer. On August 10, 2020, a notice of hearing was mailed to the parties' last-known addresses of record for a telephone hearing to be held on August 19, 2020. On August 19, 2020, the hearing was rescheduled by agreement of the parties to 8:30 a.m. on August 27, 2020, in light of the parties receiving less than 10 days' notice of the August 19, 2020 hearing. On August 19, 2020, the parties waived a second 10-day notice so that the appeal hearing could proceed on August 27, 2020. On August 20, 2020, a notice of hearing was mailed to the parties' last-known addresses of record for the hearing to be held at 8:30 a.m. on August 27, 2020. On August 27, 2020, employer representative Melissa Lewien was available for the hearing at the number the employer had registered for the hearing. The claimant/appellant, Ms. Finger, was not available at the number she had registered for the hearing and did not participate. 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:

The claimant, Jennifer Finger, is the appellant in this matter. The claimant was properly notified of the appeal hearing set for 8:30 a.m. on August 27, 2020 through pursuant to the on-the-record discussion that took place on August 19, 2020. At that time, Ms. Finger agreed that she would be available for the rescheduled hearing at 8:30 a.m. on August 27, 2020 and waived a second 10-day notice so that the hearing could proceed on August 27, 2020. On August 27, 2020, the administrative law judge made two attempts to reach Ms. Finger at the registered

number at the scheduled start of the hearing. On each attempt, no one answered and the administrative law judge left an appropriate voicemail message. The administrative law judge had the employer stand by until 8:45 a.m. to give Ms. Finger additional opportunity to make herself available for the hearing. Ms. Finger had submitted additional proposed exhibits for the rescheduled hearing. At 8:43 a.m., the administrative law judge made a third attempt to reach Ms. Finger at her registered number. Again, no one answered. An automated message stated that the voice mailbox was full. At 8:45 a.m., the administrative law judge closed the record and dismissed the employer. As of the entry of this decision, the administrative law judge has still heard nothing from the claimant/appellant regarding the hearing she missed.

The December 31, 2019, reference 01, decision held that Ms. Finger was disqualified for benefits and the employer's account would not be charged for benefits, based on the deputy's conclusion that Ms. Finger voluntarily quit on December 9, 2019 without good cause attributable to the employer. Ms. Finger's appeal from the decision is on its face late. The decision set forth a January 10, 2020 deadline for appeal. Ms. Finger filed an online appeal on July 5, 2020.

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) provides:

(7) 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 provide in Iowa Code section 17A.12(3). The record may be reopened if the absent party makes a request to reopen the hearing in writing 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.

- 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. The claimant/appellant has therefore defaulted on her 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.

DECISION:

The claimant defaulted on her appeal. The appeal is dismissed. The December 31, 2019, reference 01, decision that disqualified the claimant for benefits and that relieved the employer's account of charges, based on the deputy's conclusion that the claimant voluntarily quit on December 9, 2019 without good cause attributable to the employer, remains in effect.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. *If this decision becomes final or if you are not eligible for Pandemic Unemployment Assistance (PUA), and if you have received benefits, you may have an overpayment of benefits that you will be required to repay.* Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



James E. Timberland
Administrative Law Judge

August 28, 2020
Decision Dated and Mailed

jet/scn