

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VASKEN B HAROUTUNIAN
Claimant

APPEAL NO: 17A-UI-02963-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HAVERKAMP PROPERTIES INC
Employer

OC: 02/26/17
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:

Vasken Haroutunian filed an appeal from the March 13, 2017, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Mr. Haroutunian was discharged on February 24, 2017 for misconduct in connection with the employment. A notice of hearing was mailed to the parties' last-known addresses of record for a telephone hearing to be held at 9:00 a.m. on April 10, 2017. The employer registered a telephone number for the hearing and was available through Todd Wuestenberg. A review of the Appeals Bureau's conference call system indicates that the claimant/appellant, Mr. Haroutunian, failed to respond to the hearing notice instructions to register a telephone number at which he could be reached for the hearing. On the morning of April 11, 2017, after the hearing record had closed, Mr. Haroutunian contacted the Appeals Bureau about the hearing he had missed on April 10, 2017. Based upon the claimant/appellant's failure to participate in the hearing, based on the claimant's late call, and based on the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

ISSUES:

Should the appeal be dismissed based upon the claimant/appellant not participating in the hearing?

Has the claimant presented good cause to reopen the hearing record.

FINDINGS OF FACT:

Claimant Vasken Haroutunian is the appellant in this matter. On March 17, 2017, the Appeals Bureau mailed a hearing notice to Mr. Haroutunian and to the employer at their last-known address of record to provide notice of the appeal hearing set for 9:00 a.m. on Monday, April 10, 2017. Mr. Haroutunian received the hearing notice on or about March 19, 2017. Mr. Haroutunian noted the hearing date and time, but did not note the hearing notice instructions to register a telephone number for the hearing. Mr. Haroutunian had filed an online appeal on March 15, 2017. In response to the appeal, Iowa Workforce Development sent Mr. Haroutunian an email that included the following:

You will receive a Notice of Hearing with a date, time, and the information about registering for the hearing online or by telephone.

Read the hearing notice carefully.

Mr. Haroutunian did not comply with the hearing notice instructions to register a telephone number for the hearing. The employer did comply with the hearing notice instructions and was available for the hearing through Todd Wuestenberg. The administrative law judge left the hearing record open until 11:02 a.m. The administrative law judge then closed the record and dismissed the employer from the hearing.

At about 8:24 a.m. on April 11, 2017, Mr. Haroutunian telephoned the Appeals Bureau regarding the hearing he had missed at 9:00 a.m. on April 10, 2017. The administrative law judge had the Appeals clerk document the late call and the administrative law judge then called Mr. Haroutunian to determine whether there was good cause to reopen the hearing record based on the late call. At the time of the call, Mr. Haroutunian confirmed receipt of the hearing notice on or about March 19, 2017. Mr. Haroutunian asserted that the email he received in response to filing his appeal led him to believe he did not need to take any additional steps to register a number for the hearing. That email, referenced above, communicated exactly the opposite and told Mr. Haroutunian to heed the hearing notice instructions to register a telephone number for the hearing. No one from Iowa Workforce Development told Mr. Haroutunian that he did not need to comply with the hearing notice instructions to register a telephone number where he could be reached for the hearing.

The March 13, 2017, reference 01, decision that disqualified Mr. Haroutunian for benefits and relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Mr. Haroutunian was discharged on February 24, 2017 for misconduct in connection with the employment.

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(7) provide:

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.

The claimant/appellant, Mr. Haroutunian, appealed the claims deputy's decision, but failed to comply with the hearing notice instructions and did not participate in the hearing. Pursuant to Iowa Administrative Code rule 871-26.14(7)(c), Mr. Haroutunian's failure to read and follow the instructions on the hearing notice does not provide good cause to reopen the hearing record. Mr. Haroutunian defaulted on his appeal pursuant to Iowa Code §17A.12(3) and Iowa Admin. Code r. 871-24.14(7). The claims deputy's decision remains in effect.

DECISION:

The March 13, 2017, reference 01, decision is affirmed. The claimant defaulted on his appeal and failed to provide good cause to reopen the hearing record. The decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that the claimant was discharged on February 24, 2017 for misconduct in connection with the employment, remains in effect.

James E. Timberland
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

jet/rvs