

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FEDERICO MARTINEZ
Claimant

APPEAL NO: 16A-UI-12119-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTIMARK CORPORATION
Employer

OC: 01/03/16
Claimant: Appellant (6)

Iowa Code § 17A.12(3) – Default Decision

Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default & Reopening of Record

STATEMENT OF THE CASE:

Federico Martinez filed an appeal from the November 3, 2016, reference 04, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on an agency conclusion that Mr. Martinez had voluntarily quit on September 14, 2016 without good cause attributable to the employer. A notice of hearing was mailed to the parties' last-known addresses of record for a telephone hearing to be held at 2:00 p.m. on November 30, 2016. The employer was available for the appeal hearing through Dan Eaton. The Appeals Bureau had arrangements in place to provide a Spanish-English interpreter to assist with the hearing. A review of the Appeals Bureau's conference call system indicates that the claimant/appellant, Mr. Martinez, failed to respond to the hearing notice instructions to register a telephone number at which he could be reached for the hearing and did not participate in the hearing. Based upon Mr. Martinez's failure to participate in the hearing, 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?

Is there good cause to reopen the hearing record?

FINDINGS OF FACT:

Claimant Federico Martinez is the appellant in this matter. On November 16, 2016, the Appeals Bureau mailed a hearing notice to Mr. Martinez at his last-known address of record to make him aware of the telephone hearing set for 2:00 p.m. on November 30, 2016. The hearing notice contained information in English and in Spanish. Mr. Martinez is a Spanish speaker. The hearing notice directed Mr. Martinez to immediately register a telephone number for the appeal hearing by calling the Appeals Bureau or by following the hearing notice instructions to register a telephone number online. The hearing notice also warned Mr. Martinez that the administrative law judge would not call him if he did not follow the hearing notice instructions to register a telephone number for the hearing. The Clear2There conference calling and recording system reflects that Mr. Martinez never registered a telephone number for the appeal hearing. If

Mr. Martinez had called to register a telephone number for the hearing, the Appeals Bureau has two Spanish-speaking clerks who would have been available to assist Mr. Martinez with that process. Mr. Martinez did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. At 2:17 p.m., when Mr. Martinez had still not registered a number for the hearing or otherwise appeared for the hearing, the administrative law judge closed the record and dismissed the employer from the hearing.

At 2:48 p.m., when the administrative law judge had still not heard anything from Mr. Martinez, the administrative law judge submitted a default decision. The present decision represents an amendment of that default decision to reflect Mr. Martinez's late call.

At 2:57 p.m., Mr. Martinez contacted the Appeals Bureau regarding the hearing he had missed at 2:00 p.m. Mr. Martinez spoke with a bilingual Spanish-speaking clerk and provided a telephone number. The administrative law judge immediately secured an interpreter and returned Mr. Martinez's telephone call. Mr. Martinez confirmed that he had received timely notice of the hearing. Mr. Martinez advised that he does not check his mailbox on a regular basis, but had checked it a week before the hearing. Mr. Martinez advised that the hearing notice was in his mail box at that time. Mr. Martinez advised that he did not read the hearing notice and, for that reason, did not follow the hearing notice instructions to register a telephone number for the hearing. Mr. Martinez advised that he has all times relevant to the appeal had the assistance of a bilingual, better-educated friend. Mr. Martinez indicated that he was aware of the hearing date and time, as indicated in the hearing notice.

The November 3, 2016, reference 04, decision disqualified Mr. Martinez for benefits and relieved the employer's account of liability for benefits, based on an agency conclusion that Mr. Martinez had voluntarily quit on September 14, 2016 without good cause attributable to the employer.

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 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).

Pursuant to Iowa Administrative Code rule 871-24.14(7)(c), Mr. Martinez's call to the Appeals Bureau, 57 minutes after the time set for the hearing, does not provide good cause to reopen the hearing record. Mr. Martinez had due notice of the hearing in his native language. Mr. Martinez's contact with the Appeals Bureau occurred after the hearing record had closed and after the employer had been dismissed from the hearing. Mr. Martinez elected not to read the hearing notice instructions, even though those instructions were offered in his native language and even though he had a friend readily available to assist him in the matter.

The administrative law judge had explained to the claimant his right of appeal.

DECISION:

The November 3, 2016, reference 04, decision is affirmed. The decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on September 14, 2016 employment separation, 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