

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CEIRRA D ELLIS
Claimant

CARING HEARTS HOME CARE, INC.
Employer

**DIA CASE NO. 22IWDUI0053
IWD APPEAL NO. 21A-UI-20346**

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/24/20
Claimant: Appellant (6)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

On September 14, 2021, the employer/appellant, Caring Hearts Home Care, Inc., filed an appeal from the September 9, 2021 (reference 01) unemployment insurance decision that determined claimant Ceirra Ellis was eligible for unemployment insurance benefits and that the employer's protest regarding the separation from work was not timely. On October 21, 2021, a Notice of Telephone Hearing was mailed to the claimant's and employer's last known addresses of record for a telephone hearing to be held on November 12, 2021 at 2:30 PM. The notice instructed claimant and the employer to call a toll-free conference number at the assigned time. Because the employer failed to follow the instructions on the notice of hearing, and was not available by calling in on the date and time scheduled for this appeal hearing, no hearing was held.

ISSUE:

Should the appeal be dismissed based on the employer's failure to appear and participate?

FINDINGS OF FACT:

The employer was properly notified of the scheduled hearing for this appeal. Neither the appellant nor the employer called into the conference call at the time scheduled for this appeal hearing as required by the hearing notice. The employer did not request a postponement of the hearing. No hearing was held.

The hearing notice instruction specifically advises parties:

DATE: November 12, 2021
TIME: 2:30 PM Central Time
ALJ: Laura Lockard (Email: laura.lockard@dia.iowa.gov)
TOLL-FREE HEARING PHONE NUMBER: 1-888-601-4725

At the date and time of the hearing, all parties must call the toll-free hearing number listed above. Important additional instructions for participating in this hearing are

on the next page of this Notice. Failure to appear and participate in the hearing may result in the entry of a default judgment.

The back page of the hearing notice provides further instruction and warning:

It is your responsibility to call in for the hearing. The judge will not call you. If you do not call using the above instructions, you will not be able to participate in the hearing. If you have technical difficulties connecting at the time of hearing, please call (515) 281-6468.

Additionally, the notice states that the judge will wait five minutes after the time the hearing is scheduled to start to allow all parties to call in. It additionally states, "If you have not called in by five minutes after the hearing is scheduled to start, the judge may enter a default judgment against you."

The record was left open for a grace period of five minutes after the hearing start time to give the employer a reasonable opportunity to participate. Holding the employer in default for failure to appear and participate during a five minute window after the hearing start time is reasonable considering the time allocated for each unemployment hearing. The employer did not call in during the five minute grace period.

At 3:27 PM on November 12, 2021, nearly one hour after the hearing was scheduled, the undersigned received an e-mail message from Tom Schaeuble, owner of Caring Hearts Home Care, Inc. In the email, Schaeuble indicated he did not call in to the hearing until 2:39 PM. Schaeuble indicated in his e-mail that when he called in the conference system indicated he was the first one on the line. Despite calling in more than five minutes after the hearing was scheduled to begin and being aware that no one was on the conference line, Schaeuble did not call the number listed on the hearing notice for technical difficulties at the time of hearing.

REASONING AND CONCLUSIONS OF LAW:

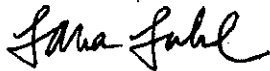
The Iowa Administrative Procedure Act at Iowa Code § 17A.12(3) provides that if a party fails to appear or participate in a hearing after proper service of notice, the judge may enter a default decision or proceed with the hearing and make a decision in the absence of the party. The statute further states that if a party makes a timely request to vacate before a decision is issued and shows good cause for failing to appear, the judge shall vacate the decision and conduct another hearing.

Iowa Admin. Code r. 871-26.14(7) provides that if the appealing 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 judge may decide the appealing party is in default and dismiss the appeal as provided in Iowa Code § 17A.12(3). The record may be reopened if the absent party makes a request to reopen the hearing and shows good cause for reopening the hearing prior to a decision being issued. The rule further states that *failure to read or follow the instructions on the notice of hearing is not good cause for reopening the record*. Iowa Admin. Code r. 871-26.14(7)(c). (Emphasis added.)

The employer appealed the unemployment insurance decision but failed to participate in the hearing. The employer has therefore defaulted on the appeal pursuant to Iowa Code § 17A.12(3) and Iowa Admin. Code r. 871-26.14(7), and the decision remains in force and effect. Good cause does not exist to reopen the record. The employer provided no explanation for the failure to call in until more than five minutes after the hearing had started.

DECISION:

The September 29, 2021 (reference 01) unemployment insurance decision concluding that the claimant is eligible to receive unemployment insurance benefits and that the employer's protest regarding the claimant's separation was untimely remains in effect as the employer is in default. The appeal is dismissed.



Laura E. Lockard
Administrative Law Judge
Department of Inspections and Appeals
Administrative Hearings Division
515-281-0414

November 19, 2021

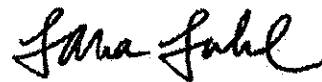
Decision Dated and Mailed

LEL

CC: Ceirra Ellis, Claimant (first class mail)
Caring Hearts Home Care, Inc., Employer (first class mail)
Natali Atkinson, IWD (email)
Joni Benson, IWD (email)

Case Title: ELLIS V. CARING HEARTS HOME CARE INC
Case Number: 22IWDUI0053
Type: Proposed Decision

IT IS SO ORDERED.



Laura Lockard, Administrative Law Judge