

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ERIC M MILLER

Claimant

APPEAL NO: 20A-UI-02623-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EASTERN IOWA GEOTHERMAL INC

Employer

OC: 02/16/20

Claimant: Respondent (6)

Iowa Code § 96.6(2) – Timeliness of Protest

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 employer filed a timely appeal from the March 18, 2020, reference 02, decision that allowed benefits to the claimant provided he was otherwise eligible, that held the employer's account could be charged for benefits, and that held the employer's protest could not be considered because it was untimely. A notice of hearing was mailed to the parties' last-known addresses of record for a telephone hearing to be held at 8:00 a.m. on May 1, 2020. The employer representative was not available for the hearing and did not participate in the hearing. The claimant also did not participate in the hearing. Based upon the employer/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 employer/appellant not participating in the hearing?

FINDINGS OF FACT:

The employer is the appellant in this matter. The employer was properly notified of the appeal hearing set for 8:00 a.m. on May 1, 2020 through the hearing notice that was mailed to the employer's last-known address of record on April 8, 2020. The employer did not comply with the hearing notice instructions to register a telephone number at which a representative could be reached for the hearing. However, Amber Toney included her name and a telephone on the employer's appeal letter. At the time the appeal hearing was set, the administrative law judge attempted to reach Ms. Toney at the number indicated on the appeal letter. The administrative law judge spoke with Landon Toney. Mr. Toney advised that the number the administrative law judge called was Mr. Toney's number and that the administrative law judge would need to speak with Amber Toney at a different number for the appeal hearing. Mr. Toney provided a different telephone number for Amber Toney. Mr. Toney also advised that the claimant, Eric Miller, had died. The administrative law judge made two attempts to reach Ms. Toney at the telephone

number provided by Mr. Toney. On each attempt, Ms. Toney did not answer and the administrative law judge left an appropriate voicemail message.

The March 18, 2020, reference 02, decision allowed benefits to the claimant provided he was otherwise eligible, held the employer's account could be charged for benefits, and held the employer's protest could not be considered because it was untimely.

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 employer/appellant appealed the representative's decision but failed to participate in the hearing. The employer/appellant has therefore defaulted on its 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.

If the employer/appellant disagrees with this decision, the employer/appellant may follow the appeal instructions on the first page of this decision.

DECISION:

The employer defaulted on its appeal. The appeal is dismissed. The March 18, 2020, reference 02, decision remains in effect.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light-colored background.

James E. Timberland
Administrative Law Judge

May 5, 2020
Decision Dated and Mailed

jet/scn