

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LATOYA S YOUNG

Claimant

APPEAL NO: 14A-UI-02969-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINSETH HOTEL CORPORATION

Employer

OC: 02/16/14

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:

An appeal was filed from an unemployment insurance decision dated March 7, 2014, (reference 01), that concluded the claimant was not eligible to receive unemployment insurance benefits. 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 April 9, 2014. A review of the Appeals Bureau's conference call system shows the claimant/appellant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. At 3:04 p.m. on April 9, 2014, the claimant called regarding the hearing. The claimant did not read the notice before the hearing.

ISSUE:

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

FINDINGS OF FACT:

The party was properly notified of the scheduled hearing on this appeal. The claimant/appellant failed to provide a telephone number at which the appellant could be reached for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The representative's decision concluded that the claimant/appellant was not eligible for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant's request to reopen the hearing should be granted or denied.

871 IAC 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with 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 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 first time the claimant called the Appeals Section for the April 9, 2014, hearing was an hour after the hearing was scheduled. Although she intended to participate in the hearing, the claimant failed to read or follow the hearing notice instructions and did not contact the Appeals Section prior to the hearing. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. Intent alone is not sufficient. An intent must be accompanied by an overt act carrying out that intent. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). In the case of an appeal hearing, that overt act is to call the Appeals Section and provide a telephone number where the party may be contacted. The claimant did not do this and therefore has not established good cause to reopen the hearing. The claimant's request to reopen the hearing is denied.

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 the decision and shows good cause for failing to appear, the judge shall vacate the decision and conduct another hearing.

Agency rule 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. 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.

The claimant/appellant appealed the unemployment insurance 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 decision remains in force and effect.

If the claimant/appellant disagrees with this decision, a written request to reopen the record must be made to the administrative law judge within 15 days after the mailing date of this decision. The written request should be mailed to the administrative law judge at the address listed at the end of this decision and must explain the emergency or other good cause that prevented the claimant/appellant from participating in the hearing at the scheduled time.

DECISION:

The unemployment insurance decision dated March 7, 2014, (reference 01), is affirmed. The decision denying benefits remains in effect.

Beth A. Scheetz
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-242-5144

Decision Dated and Mailed

bas/css