

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GREGORY R LOVETT

Claimant

APPEAL NO: 16A-UI-08279-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER INTERNATIONAL INC

Employer

OC: 06/19/16

Claimant: Appellant (6)

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

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

Iowa Admin. Code r. 871-26.14(7) – Reopening of Closed Record

STATEMENT OF THE CASE:

Gregory Lovett filed a late appeal from the July 18, 2016, reference 03, decision that disqualified him for unemployment insurance benefits and that relieved the employer's account of liability for benefits, based on an agency conclusion that Mr. Lovett had been discharged on May 27, 2016 for sleeping on the job. 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 August 17, 2016. The employer was available through Crystal Stone. A review of the Appeals Bureau's conference call system indicates that the claimant/appellant, Mr. Lovett, failed to respond to the hearing notice instructions to provide a telephone number at which he could be reached for the hearing. Based upon the claimant/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.

ISSUES:

Whether the appeal be dismissed based upon Mr. Lovett not participating in the hearing.

Whether Mr. Lovett has presented good cause to reopen the hearing record.

FINDINGS OF FACT:

Claimant Gregory Lovett is the appellant in this matter. The parties were properly notified of the appeal hearing set for 9:00 a.m. on August 17, 2016 through hearing notice that was mailed to the parties last-known address of record on August 2, 2016. The employer followed the hearing notice instructions to register a telephone number for the appeal hearing and was available at the time of the hearing through Crystal Stone. The claimant/appellant, Gregory Lovett, did not follow the hearing notice instructions to register a telephone number at which he could be reached for the hearing and did not participate. Mr. Lovett had not requested postponement of the hearing as required by the hearing notice.

The July 18, 2016, reference 03, decision that disqualified Mr. Lovett for unemployment insurance benefits and that relieved the employer's account of liability for benefits, based on an agency conclusion that Mr. Lovett had been discharged on May 27, 2016 for sleeping on the job. Mr. Lovett's appeal from the decision is on its face late. The appeal deadline was July 28, 2016. The appeal was filed online on July 29, 2016.

In connection with the hearing set for 9:00 a.m. on August 17, 2016, the administrative law judge held the hearing record open until 9:16 a.m. to provide Mr. Lovett with additional opportunity to register a telephone number for the hearing and participate in the hearing. The administrative law judge then closed the record and dismissed the employer representative.

At 3:02 p.m. on August 17, 2016, Mr. Lovett contacted the Appeals Bureau with regard to the hearing he had missed at 9:00 a.m. that day. At 4:19 p.m., the undersigned administrative law judge returned Mr. Lovett's call to discuss with him his absence from the hearing and the reason for the absence. Mr. Lovett confirmed timely receipt of the hearing notice. Mr. Lovett indicated that he had not read the hearing notice beyond noting the hearing date and time. Mr. Lovett indicated that he had not read the hearing notice instructions to register a telephone number for the hearing and had not registered a number for the hearing prior to his call at around 3:00 p.m. on August 17, 2016.

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.

Mr. Lovett appealed the representative's decision but failed to participate in the hearing. Mr. Lovett therefore defaulted on his 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.

Mr. Lovett has failed to present good cause to reopen the closed hearing record. Mr. Lovett received appropriate notice of the hearing. Mr. Lovett failed to read and follow the instructions on the hearing notice that directed him to register a telephone number for the hearing. Those instructions also warned the administrative law judge would not contact Mr. Lovett for the hearing if he did not register a number for the hearing. Pursuant to Iowa Administrative Code rule 871-26.14(7)(c), Mr. Lovett's request to reopen the hearing record is denied.

DECISION:

The claimant defaulted on his appeal. The claimant's request to reopen the record is denied. The July 18, 2016, reference 03, decision is affirmed. The decision that disqualified the claimant for unemployment insurance benefits and that relieved the employer's account of liability for benefits, based on a May 27, 2016 discharge, remains in effect.

James E. Timberland
Administrative Law Judge
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Decision Dated and Mailed

jet/pjs