

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

DAWN R MARRAH
Claimant

APPEAL NO: 18A-UI-05738-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FBG SERVICE CORPORATION
Employer

OC: 04/15/18
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:

Dawn Marrah filed an appeal from the May 8, 2018, reference 02, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the Benefits Bureau deputy's conclusion that Ms. Marrah had voluntarily quit on April 10, 2018 without good cause attributable to the employer. A notice of hearing was mailed to the parties' last-known address of record for a telephone hearing to be held at 11:00 a.m. on June 11, 2018. The employer registered a telephone number for the hearing and was available through Amelia Gallagher of ADP/Equifax and witnesses Kay Volz and Pam Kincaid. Ms. Marrah also registered a telephone number for the hearing and was available at the scheduled start of the hearing. Because Ms. Marrah asserted she had not received the exhibits the employer mailed to her on June 1, 2018, it was necessary to adjourn the hearing to provide Ms. Marrah reasonable opportunity to receive and review the exhibits prior to the presentation of evidence. Ms. Marrah and the employer agreed to recommence the appeal hearing at 2:00 p.m. on June 11, 2018. At that time, the employer representative and employer witnesses were available to proceed, but the claimant/appellant, Ms. Marrah, was not available at the number she had registered 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.

ISSUE:

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

FINDINGS OF FACT:

Claimant Dawn Marrah is the appellant in this matter. Ms. Marrah was properly notified of the appeal hearing set for 11:00 a.m. on June 11, 2018 through the hearing notice that was mailed to her last-known address of record on May 24, 2018. On the morning of the hearing, Ms. Marrah took timely steps to register a telephone number for the hearing. Ms. Marrah, the employer representative, and the employer witnesses were available at the scheduled start of the hearing. After the administrative law judge provided the opening statement, and during the discussion about proposed exhibits, Ms. Marrah asserted that she had not received the exhibits the employer's representative mailed to Ms. Marrah's address of record on June 1, 2018. Due to the employer's timely submission of proposed exhibits and Ms. Marrah's assertion that she

had not received the exhibits, the administrative law judge deemed it necessary to adjourn the appeal hearing so that Ms. Marrah could receive and review the proposed exhibits prior to the presentation of evidence. The appeal hearing adjourned at 11:26 a.m. Prior to adjournment, Ms. Marrah and the employer agreed to recommence the appeal hearing at 2:00 p.m. on June 11, 2018. At 11:39 a.m., the administrative law judge emailed a copy of the marked, proposed exhibits to Ms. Marrah, the employer representative and the employer witnesses. Though the administrative law judge had asked Ms. Marrah to send a responsive email to confirm receipt of the exhibits, Ms. Marrah did not respond.

At 2:00 p.m. on June 11, 2018, the employer representative and the employer witnesses were available to proceed with the appeal hearing, but Ms. Marrah was not available at the number she had registered and had used at 11:00 a.m. The administrative law judge initially made two attempts to reach Ms. Marrah. Ms. Marrah did not answer either call. The administrative law judge left an appropriate message on each attempt. The administrative law judge left the hearing record open until 2:15 p.m. and had the employer stand by until that time to provide Ms. Marrah with additional opportunity to make herself available for the hearing. Prior to closing the record at 2:16 p.m., the administrative law judge made a third attempt to reach Ms. Marrah at 2:14 p.m. When Ms. Marrah did not answer, the administrative law judge left a message advising Ms. Marrah that the record would close and a default decision would enter. The administrative law judge provided Ms. Marrah with the toll-free for the Appeals Bureau. As of 2:50 p.m. on June 11, 2018, Ms. Marrah has yet to respond.

The May 8, 2018, reference 02, decision disqualified Ms. Marrah for unemployment insurance benefits and relieved the employer's account of liability for benefits, based on the Benefits Bureau deputy's conclusion that Ms. Marrah had voluntarily quit on April 10, 2018 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.

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.

Iowa Administrative Code rule 871-26.8(4) provides:

(4) A request to reopen a record or vacate a decision must be made in writing. If necessary, the presiding officer may hear, ex parte, additional information regarding the request for reopening. The granting or denial of such a request may be used as grounds for appeal to the employment appeal board of the department of inspections and appeals upon the issuance of the presiding officer's final decision in the case.

The claimant/appellant appealed the representative's 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 representative's decision remains in force and effect.

If the claimant/appellant disagrees with this decision, pursuant to the rule, the claimant/appellant must make a written request to the administrative law judge that the hearing be reopened 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 good cause that prevented the claimant/appellant from participating in the hearing at its scheduled time.

DECISION:

The May 8, 2018, reference 02, decision is affirmed. The decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the Benefits Bureau deputy's conclusion that the claimant voluntarily quit on April 10, 2018 without good cause attributable to the employer, remains in effect.

James E. Timberland
Administrative Law Judge
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Iowa Workforce Development
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Decision Dated and Mailed

jet/rvs