

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

EDWARD D CURRY
Claimant

DEERE & CO – DES MOINES WORKS
Employer

**APPEAL 14A-UI-10899-LT
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/10/14
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:

Claimant/appellant filed an appeal from the October 14, 2014, (reference 02) unemployment insurance decision that concluded claimant was not eligible for unemployment insurance benefits after a separation from employment. Notices of hearing were mailed to the parties' last-known addresses of record for a telephone hearing scheduled for November 7, 2014. A review of the Appeals Bureau's conference call system indicates that the appellant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the scheduled hearing and no hearing was held. The appellant called after the hearing record had been closed, and had not followed the hearing notice instructions pursuant to Iowa Admin. Code r. 871-26.14(7)a-c.

ISSUES:

Should the appeal be dismissed based on the appellant's failure to appear and participate?
Should the hearing record be reopened?

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing for this appeal. The appellant failed to provide a telephone number at which he could be reached for the scheduled hearing and did not participate or request a postponement of the hearing as required by the hearing notice. Official notice of the Clear2there hearing control screen is taken to establish that appellant did not call or register online with the Appeals Bureau to provide a telephone number and/or name of a representative until more than an hour after the hearing record had been closed.

The hearing notice instruction specifically advises parties:

Immediately register your phone number online or by calling one of the numbers provided below for a telephone hearing scheduled for:

Date: FRI NOV 07, 2014
Iowa Time: 2:00 PM

The judge will not call you on the day of the hearing if you have not registered your phone number with the Appeals Bureau in Des Moines, Iowa as instructed below.

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

If you do not participate in the hearing because you do not register for the hearing, register late, or cannot be reached at the number you provided when the judge calls for the hearing, the appeal may be dismissed or decided based on other available evidence.

The judge will not call you unless you register online or by phone before the hearing and give your phone number to the Appeals Bureau as instructed on the front side of this notice. This is true even if agency representatives previously contacted you directly or you provided your phone number on some written documentation.

As a *courtesy* to the appellant the record was left open for a minimum of 15 minutes after the hearing start time to give the appellant a *reasonable* opportunity to participate. This reasonable amount of time is appropriate because if a hearing were conducted with the non-appealing party alone it would have likely concluded in 15 minutes or less. Allowing additional time would prejudice the non-appealing party for appearing in a timely manner. The 15-minute wait time is also a reasonable period to hold the record open as insufficient time would remain to conduct a quality due process hearing in the time allotted by the Appeals Bureau. Each two-party hearing is allowed 60 minutes and a one-party hearing allowed 30 minutes. Holding the appellant in default for failure to appear and participate during a 15-minute window after the hearing start time is entirely reasonable considering the time allocated for unemployment hearings.

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

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Admin. Code r. 871-26.14(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.

At issue is a request to reopen the record made after the hearing had concluded. The request to reopen the record is denied because the party making the request failed to participate by reading and following the instructions on the hearing notice.

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. 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 § 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.

The first time the appellant called the Appeals Bureau for the hearing was after the record had been closed. Although the appellant may have intended to participate in the hearing, he failed to read or follow the hearing notice instructions and did not contact the Appeals Bureau as

directed 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. The Iowa Supreme Court has opined that a default should not be set aside for ordinary negligence or want of ordinary care. Defaults should not be set aside where the movant ignores plain mandates with ample opportunity to abide. See *Houlihan v. Emp't Appeal Bd.*, 545 N.W.2d 863 (Iowa 1996). Here the plain and simple mandate is to read the hearing notice and register a telephone number where the party can be reached for the hearing. The second simple and obvious mandate is to be available at the number provided at the date and time of the hearing. Further, if the party misses or does not receive the hearing call, the party has telephone numbers on the hearing notice at which inquire. Due process requires notice and an opportunity to be heard, both of which were provided to the parties. *This rule does not provide exceptions for good intentions and/or a party contacting the Appeals Bureau within a reasonable amount of time after the hearing is scheduled.* It can be assumed an appellant intends to participate in the hearing simply by the fact an appeal is filed, but their responsibility does not end there and *all* parties are required to follow the specific written instructions printed on the hearing notice. The appellant filed the appeal and is held solely responsible for going forward with the case in an expeditious and deliberate manner. The rule holds appellant in default if not present *at the start* of hearing. As a *courtesy*, appellant was granted additional time not required by statute or rule. Here, notwithstanding additional time, notice and opportunity, the appellant failed to prosecute the case promptly and as such the appellant is in default and the appeal shall be dismissed. Iowa Code §17A.12(3) and Iowa Admin. Code r. 24.14(7). The representative's decision remains in force and effect.

DECISION:

The appellant is in default and the appeal is dismissed. The record shall not be reopened. The unemployment insurance decision dated October 14, 2014, (reference 02) denying benefits remains in effect.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs