

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

NELSON W CASSIBERRY
Claimant

L A LEASING INC
Employer

APPEAL 16R-UI-05635-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/10/16
Claimant: Respondent (2)**

Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available – Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The employer filed an appeal from the March 4, 2016 (reference 03) unemployment insurance decision that allowed benefits. A hearing was held on April 1, 2016, and the claimant did not participate in the hearing. A hearing decision favorable to the employer was issued April 4, 2016, finding the claimant was not able to and available for work. The claimant appealed the decision to the Employment Appeal Board (EAB). Pursuant to an EAB remand order, which did not vacate the earlier administrative law judge's decision denying benefits, due notice was issued and a telephone conference hearing was scheduled to be held on June 6, 2016 at 8:00 a.m. to allow the claimant an opportunity to participate in the hearing. The claimant did not register for the hearing and no hearing was held. The claimant did not respond to the hearing notice and did not participate. Because the EAB did not vacate the original appeal in decision number 16A-UI-03055-S1-T, that hearing record is adopted and incorporated herein.

ISSUE:

Should the original hearing decision be adopted?

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The claimant failed to respond to the hearing notice instruction and provide a telephone number at which he could be reached, nor did he request a postponement of the hearing as required by the hearing notice.

The hearing notice instruction specifically advised parties:

Date: MONDAY, JUNE 6, 2016
Iowa Time: 8:00 a.m.

You must register for the hearing immediately!

You must register your phone number and the name(s) and phone number(s) of any witness(es) with the Appeals Bureau. If you do not register, the judge will not be able to call you or your witness(es) for the hearing.

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant failed to register a phone number to participate in the June 6, 2016 hearing. Inasmuch as the decision was not vacated as a result of the Employment Appeal Board remand, the administrative law judge's findings of fact in appeal 16A-UI-03055-S1-T is hereby adopted and incorporated herein as the findings of fact for appeal 16R-UI-05635-JC-T.

REASONING AND CONCLUSIONS OF LAW:

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 claimant appealed the unemployment insurance hearing decision but failed to be available to participate in the scheduled hearing.

Therefore, the administrative law judge concludes that inasmuch as the decision was not vacated as a result of the Employment Appeal Board remand, the administrative law judge's reasoning and conclusions of law in appeal 16A-UI-03055-S1-T is hereby adopted and incorporated herein as the findings of fact for appeal 16R-UI-05635-JC-T.

DECISION:

Inasmuch as the decision was not vacated as a result of the Employment Appeal Board remand, the administrative law judge's decision in 16A-UI-03055-S1-T is hereby adopted and incorporated herein as the findings of fact for appeal 16R-UI-05635-JC-T. Benefits are denied, as the claimant is unable to and unavailable for work.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/can