

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANNE L FLITSCH
Claimant

APPEAL NO. 14A-UI-11793-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

3S VENTURE LLC
Employer

OC: 10/19/14
Claimant: Respondent (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:

The employer appealed an unemployment insurance decision dated November 7, 2014, reference 02, that concluded its protest could not be accepted because it was not filed timely. Notices of hearing were mailed to the parties' last-known addresses of record for a telephone hearing to be held at 11:30 a.m. on December 5, 2014. The employer did not participate in the hearing.

ISSUE:

Should the appeal be dismissed because the employer did not participate in the hearing?

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. A review of the Appeals Bureau's conference call system shows the employer failed to respond to the hearing notice and provide a telephone number at which it could be reached for the hearing.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

After the hearing had concluded, the manager of the employer, Mike Singh, called the Appeals Bureau and said he was waiting for a call from someone with the Appeal Bureau because when he filed his appeal, someone told him the Appeals Bureau had his phone number. When he learned that the employer was not currently being charged for benefits, he stated he was not requesting that the hearing be reopened.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedures 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.

The Agency rules at Iowa Admin. Code r. 871-26.14(7) provide 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 rules further state 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 employer did not participate in the hearing at the scheduled time and 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 employer disagrees with this decision, a request must be made 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 emergency or other good cause that prevented the employer from participating in the hearing at its scheduled time.

DECISION:

The unemployment insurance decision dated November 7, 2014, reference 02, is affirmed. The decision granting benefits remains in effect. The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

Steven A. Wise
Administrative Law Judge
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Iowa Workforce Development
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Des Moines, Iowa 50319-0209
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Decision Dated and Mailed

saw/css