

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**JACKIE TATUM**

Claimant

**APPEAL NO. 16A-UI-09283-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EXPRESS SERVICES INC**

Employer

**OC: 07/17/16**

**Claimant: Respondent (6)**

Iowa Code § 96.4-3 – Able and Available for Work  
Iowa Code § 17A.12(3) - Default Decision  
871 IAC 26.14(7) - Dismissal of Appeal on Default

**STATEMENT OF THE CASE:**

The employer/appellant filed a timely appeal from a representative's unemployment insurance decision dated August 16, 2016, (reference 03), that concluded the claimant is able and available for work and eligible for unemployment insurance benefits. Notices of hearing were mailed to the parties' last-known addresses of record for a telephone hearing to be held at 1:00 p.m. on September 13, 2016. A review of the Appeals Bureau's conference call system indicates that the employer/appellant provided a telephone number prior to the hearing but when called for the hearing it notified the administrative law judge it would not be participating in the hearing.

**ISSUE:**

The issue is whether the underlying decision should be affirmed and the appeal should be effectively dismissed based upon the employer/appellant's failure to participate in the hearing.

**FINDINGS OF FACT:**

The parties were properly notified of the scheduled hearing on this appeal. A Notice of Appeal and Hearing was mailed to both parties on August 29, 2016. There is no evidence suggesting the employer/appellant did not receive the hearing notice prior to the hearing scheduled on September 13, 2016.

The front page of the hearing notices states: "**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)." The hearing notice instructions further advise the parties, "If you do not participate in the hearing, the judge may dismiss the appeal or issue a decision without considering your evidence or witness(es)."

The employer/appellant informed the administrative law judge when called for the hearing at 1:00 p.m. September 13, 2016, it did not wish to participate in the hearing.

The representative's decision concluded that the claimant was eligible for unemployment insurance benefits.

**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. Likewise, Agency rule 871 IAC 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).

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. All parties are required to follow the specific written instructions printed on the hearing notice. Due process requires notice and an opportunity to be heard, both of which were provided to the parties.

The employer/appellant appealed the unemployment insurance decision but failed to participate in the scheduled appeal hearing. The employer/appellant has therefore defaulted on its appeal pursuant to Iowa Code § 17A.12(3) and 871 IAC 26.14(7), and the representative's decision remains in force and effect.

If the employer/appellant disagrees with this decision, a written request to reopen the record must be made to the administrative law judge 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 employer/appellant from participating in the hearing at the scheduled time. The employer/appellant also has the option to appeal the decision directly to the Employment Appeal Board, whose address is listed at the beginning of the decision.

**DECISION:**

The representative's unemployment insurance decision dated August 16, 2016, (reference 03), is affirmed. The decision allowing benefits to the claimant remains in effect.

---

Julie Elder  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

---

Decision Dated and Mailed

je/pjs