

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

AMANDA VARDEMAN
Claimant

APPEAL NO. 14A-UI-07415-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEARS MANUFACTURING CO
Employer

OC: 06/15/14
Claimant: Appellant (6)

Iowa Code § 17A.12(3) - Default Decision
871 IAC 26.14(7) - Dismissal of Appeal on Default

STATEMENT OF THE CASE:

An appeal was filed from a representative's unemployment insurance decision dated July 7, 2014, (reference 01), that concluded Amanda Vardeman (claimant/appellant) was not eligible for unemployment insurance benefits after a separation from employment from Sears Manufacturing Company (employer/respondent). 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 August 11, 2014. A review of the Appeals Bureau's conference call system indicates that the claimant/appellant was not available at the telephone number provided for the hearing so no hearing was held.

ISSUE:

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

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The claimant/appellant received the hearing notice prior to the hearing scheduled on August 11, 2014. The front page of the hearing notices states: "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." This information can be found on both the front and the back of the hearing notice. The hearing notice instructions further advise parties, "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 claimant/appellant called the Appeals Bureau at 8:25 a.m. and requested a postponement because she had not yet received her phone records. The administrative law judge spoke with the claimant and advised her the call was being recorded. It was suggested that the hearing would proceed as scheduled but the record could remain open pending receipt of the phone records, if the administrative law judge found it necessary after hearing the evidence. The

claimant appeared to be in agreement with that and the call was ended with the administrative law judge stating she would be called at 11:30 a.m. The claimant/appellant was not available when called for the hearing so no hearing was held. The claimant/appellant had not called the Appeals Bureau by 4:00 p.m. on August 11, 2014, to offer an explanation as to why she was not available.

The representative's decision concluded that the claimant/appellant was not 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 and 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.

If the claimant/appellant responds to the notice of hearing after the record has been closed, the administrative law judge shall not take the evidence of the late party. Instead, the administrative law judge shall inquire ex parte as to why the party was late in responding to the notice of hearing. For good cause shown, the record shall be reopened and cause further notice of hearing to be issued. The record shall not be reopened without a finding of good cause for the party's late response to the notice of hearing. 871 IAC 26.14(7)b. Furthermore, the rule states that failure to read or follow the hearing notice instructions shall not constitute good cause. 871 IAC 26.14(7)c.

The claimant/appellant appealed the unemployment insurance decision but failed to participate in the scheduled appeal hearing. The claimant/appellant has therefore defaulted on her 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 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 emergency or other good cause that prevented the appellant from participating in the hearing at the scheduled time. The 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 July 7, 2014, (reference 01), is affirmed. The decision denying benefits remains in effect.

Susan D. Ackerman
Administrative Law Judge
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Iowa Workforce Development
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Decision Dated and Mailed

sda/css