

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**MATHEW A SMITH**  
Claimant

**FLAGGER PROS USA LLC**  
Employer

**APPEAL 14A-UI-12781-LT**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/09/14**  
**Claimant: Respondent (6)**

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

**STATEMENT OF THE CASE:**

An appeal was filed from an unemployment insurance decision dated December 9, 2014, (reference 02) that allowed benefits based upon a work refusal. Notice of hearing was mailed to the parties' last-known addresses of record for a telephone hearing to be held at 8:30 a.m. on January 8, 2015. A review of the Appeals Bureau's conference call system after 8:45 a.m. the same day shows the employer/appellant was not available at the telephone number provided for the hearing and did not participate in the hearing. The appellant called in response to the administrative law judge's (ALJ) message at 8:54 a.m., after the hearing record was closed at 8:45 a.m.

**ISSUES:**

Should the hearing record be reopened?

Should the appeal be dismissed based upon the appellant not participating in the hearing?

**FINDINGS OF FACT:**

The party was properly notified of the scheduled hearing for this appeal. The appellant was not available at the telephone number provided for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. The appellant was not available for the hearing at the number provided because the call went to voice mail. Official notice of the Clear2there hearing control screen is taken to establish that appellant did not answer when called at the number provided at registration.

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: THU JAN 8, 2015  
Iowa Time: 8:30 AM

**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 concluded that the claimant was eligible for unemployment insurance benefits because the offer of work was made outside of the benefit year and the Agency does not have jurisdiction outside of the benefit year.

#### **REASONING AND CONCLUSIONS OF LAW:**

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 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 December 9, 2014, (reference 02) allowing benefits remains in effect.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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