IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

GABRIEL B WALKER **Claimant** **HOME DEPOT USA INC** **Employer**	**APPEAL 17A-UI-10363-SC-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 07/30/17** **Claimant: Appellant (6)**

Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default
Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

Gabriel B. Walker (claimant/appellant) filed an appeal from the August 16, 2017, reference 01, unemployment insurance decision that concluded he was not eligible for unemployment insurance benefits after a separation from employment. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for October 26, 2017, at 1:00 p.m. A review of the Appeals Bureau's conference call system indicates that the appellant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the scheduled hearing and no hearing was held.

ISSUE:

Should the appeal be dismissed based on the appellant's failure to appear and participate?

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing for this appeal. The appellant did not provide a telephone number for the scheduled hearing or request a postponement of the hearing as required by the hearing notice. Official notice of the Clear2there hearing control screen is taken to establish that appellant did not call or register online with the Appeals Bureau to provide a telephone number and/or name of a representative.

The hearing notice instruction specifically advises parties of the date and time of the hearing. It also 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) for the hearing.

The back page of the hearing notice provides further instruction and warning:

> 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 information quoted above also appears on the hearing notice in Spanish.

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 unemployment insurance decision stated that the claimant 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. 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 record may be reopened if the absent party makes a request to reopen the hearing and shows good cause for reopening the hearing. The rule further states 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.

If the appellant disagrees with this decision, a written request to reopen the record may 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 top right caption.

DECISION:

The August 16, 2017, reference 01, unemployment insurance decision denying benefits remains in effect as the appellant is in default and the appeal is dismissed.

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Stephanie R. Callahan
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

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Decision Dated and Mailed

src/scn