

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

EDWARD D ZACHMEYER
Claimant

APPEAL 18A-UI-04845-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

STELLAR MANAGEMENT GROUP V INC
Employer

**OC: 04/01/18
Claimant: Appellant (6R)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
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 claimant filed an appeal from the April 20, 2018, (reference 01) unemployment insurance decision that denied benefits. A first hearing was scheduled for May 14, 2018. A request for postponement was made by the claimant to allow him to attend a scheduled job interview. A second notice of the hearing was mailed to the claimant's last known address of record for a telephone hearing to be held at 8:00 a.m. on May 24, 2018. A review of the Appeals Bureau's conference call system after 8:15 a.m. the same day shows the claimant/appellant failed to be available when called for the scheduled hearing at the phone number he registered. A voicemail was provided, directing the claimant to call the Appeals Bureau immediately if he wanted to participate in the hearing. A grace period was extended to allow him to respond before the record was closed. No hearing was held.

At the time of the scheduled hearing, the employer representative stated the claimant may be unavailable due to continued incarceration in Wapello County.

ISSUE:

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

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing for this appeal. The claimant/appellant, Edward D. Zachmeyer, failed to be available at the time scheduled for this appeal hearing as required by the hearing notice. The claimant/appellant did not request a postponement of the May 24, 2018 hearing. No friend, family member or representative on behalf of the claimant contacted the Appeals Bureau. No hearing was held.

The back page of the hearing notice provided instruction and warning:

Failure to Participate

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 agency's decision concluded that the claimant was disqualified for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedure 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.**

Agency rules at Iowa Admin. Code r. 26.14(7) provides:

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 in writing 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.
- c. **Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.** (Emphasis added.)

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 instruction with ample opportunity to comply. See *Houlihan v. Emp't Appeal Bd.*, 545 N.W.2d 863 (Iowa 1996). Here, the clear directive is to read the hearing notice and register a telephone number where the party can be reached for the hearing. The second part of that directive 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, he or she may call the telephone numbers on the hearing notice. Due process requires notice and an opportunity to be heard, both of which were provided to each party. *The rule does not provide exceptions for good*

intentions and/or a party contacting the Appeals Bureau within a 'reasonable' or certain amount of time after the hearing is scheduled.

The claimant/appellant, Edward D. Zachmeyer, appealed the unemployment insurance decision but failed to be available to participate in the scheduled hearing. The appellant has therefore defaulted on his appeal 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 claimant/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 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.

REMAND: The issue of whether the claimant is able to and available for work due to incarceration is delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The claimant/appellant is in default and the appeal is dismissed. The unemployment insurance decision dated April 20, 2018, (reference 01) denying benefits remains in effect. **REMAND:** The issue of whether the claimant is able to and available for work due to incarceration is delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
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

jlb/scn