

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KIMBERLY M YOUNG
Claimant

MARTIN LUTHER HOME CORPORATION
Employer

APPEAL 20R-UI-04841-AD-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/08/20
Claimant: Appellant (6)

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

STATEMENT OF THE CASE:

On April 10, 2020, Kimberly Young (claimant/appellant) filed a timely appeal from the April 7, 2020 (reference 01) unemployment insurance decision that denied benefits.

Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for May 6, 2020. Claimant participated personally. Martin Luther Home Corporation (employer/respondent) did not register a number for the hearing and did not participate. A decision was issued May 8, 2020, finding claimant eligible for benefits.

Employer appealed the May 8, 2020 decision to the Employment Appeal Board (EAB). The EAB found employer did not receive timely notice of the May 6, 2020 hearing and remanded this matter for another hearing before an administrative law judge.

Another hearing was set for June 24, 2020 at 3 p.m. Neither party registered a number at which it could be reached to participate in the hearing. No hearing was held.

ISSUES:

- I. Should the May 8, 2020 decision remain in force due to employer's failure to participate in the remanded hearing?

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing for this appeal. Employer failed to provide a telephone number at which it could be reached for the scheduled hearing and did not participate 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 employer 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:

IMPORTANT NOTICE!

YOU MUST PROVIDE YOUR PHONE NUMBER TO THE APPEALS BUREAU AS SOON AS POSSIBLE. If you do not follow these instructions, the judge will not call you for the hearing. You must also provide the name(s) and phone number(s) of any witnesses to the Appeals Bureau.

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 Appeals Bureau does not have a phone number for this hearing unless you provide it to us by following the instructions on the other side of this page. If you do not follow those instructions, the judge will not call you for the hearing. 871 IAC 26.14(7).

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

As a *courtesy*, the record was left open for a minimum of 15 minutes after the hearing start time to give employer 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 hearing is allowed 60 minutes. Holding a party 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 May 8, 2020 decision found claimant eligible for benefits. The EAB decision remanding this matter for another hearing notes the May 8 decision remains in force unless and until a differing determination is made pursuant to the remand.

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 in writing under subrule 26.8(3) and shows good cause for reopening the hearing.

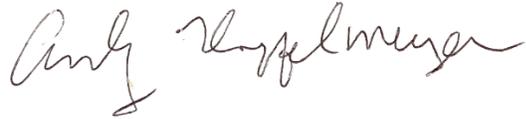
- a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.
- b. If a party responds to the notice of hearing after the record has been 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.

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 to inquire.

Because employer failed to register a number for or otherwise participate in the remanded hearing, there is no basis on which to issue a determination different than the May 8, 2020 decision finding claimant eligible for benefits. Employer has essentially defaulted on its appeal of the May 8, 2020 decision by failing to participate in the remanded hearing. The May 8, 2020 decision therefore remains in full force and effect.

DECISION:

The May 8, 2020 decision finding claimant eligible for benefits remains in full force and effect.



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

July 6, 2020
Decision Dated and Mailed

abd/scn