

IOWA DEPARTMENT OF INSPECTIONS AND
APPEALS
Division of Administrative Hearings
Wallace State Office Building
Des Moines, Iowa 50319

DECISION OF THE ADMINISTRATIVE LAW JUDGE

RANDY J VERMANCE
841 S 7TH AVE
IOWA CITY, IA 52240-6205

**IOWA WORKFORCE DEVELOPMENT
REEMPLOYMENT SERVICES
COORDINATOR LORI ADAMS &
ANN LEFLORE**

JONI BENSON, IWD

Appeal Number: 14IWDUI284-285
OC: 05/04/14
Claimant: Claimant (6)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed Notice of Appeal, directly to the **Employment Appeal Board, 4TH Floor Lucas Building, Des Moines, Iowa 50319, or by fax to: (515)281-7191**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to the department. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

November 5, 2014

(Decision Dated & Mailed)

Iowa Code section 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 decisions dated September 5 and September 9, 2014, issued by Iowa Workforce Development (IWD) which determined that the Claimant, Randy J. Vermance, not eligible for unemployment insurance for failure to report for a reemployment and eligibility assessment on August 28, 2014, and was then overpaid \$195.00 for one week, August 24 through August 30, 2014, and was not eligible for further unemployment insurance benefits until that amount was repaid. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing to be held at 8:30 a.m. on October 28, 2014 before Administrative Law Judge Martin Francis. The notice indicated that the judge would wait five minutes after the time the hearing was scheduled to begin to allow all parties to call in. The notice further

indicated that if the Claimant did not call in within that time, he would not be able to participate in the hearing.

At the date and time listed above, ALJ Francis and IWD Representative Workforce Advisor Ann LeFlore called to the telephone conference number to participate in the hearing. At 8:35 a.m. the Claimant had not called. Based upon the Claimant's failure to participate in the hearing and applicable law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

ISSUE

Should the appeal be dismissed based upon the failure of the Claimant to participating in the hearing?

FINDINGS OF FACT

The parties were properly notified of the scheduled hearing on this appeal. The Claimant, Randy J. Vermance, did not call in to the conference call and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The IWD decisions had concluded that the Claimant was not eligible for unemployment insurance benefits until he reported for reemployment eligibility assessment and repaid the overpayment of benefits of \$195.00, to which he was not entitled because of his failure to report for the reemployment assessment.

REASONING AND CONCLUSIONS OF LAW

The Iowa Administrative Procedures Act at Iowa Code section 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.

Iowa Workforce Development has adopted Rule 871 IAC 26.14(7) which 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 section 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 Claimant appealed the decisions at issue but failed to participate in the hearing. The Claimant has therefore defaulted on his appeal pursuant to Iowa Code section 17A.12(3) and Iowa Administrative Code Rule 871 IAC 24.14(7), and the IWD decisions of September 5 and September 8, 2014 remain in force and effect.

If the Claimant disagrees with this decision, pursuant to the rule, the Claimant must make a written request that the hearing be reopened 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 Claimant from participating in the hearing at its scheduled time. Per instruction at the head of this decision the Claimant may also enter an appeal with the Employment Appeal Board.

DECISION

The Iowa Workforce Development decisions dated September 5 and September 8, 2014 are **AFFIRMED**. The decisions denying benefits remains in effect and IWD may take any additional action necessary to implement this decision.

Martin H. Francis
Administrative Law Judge
Iowa Department of Inspections and Appeals
Division of Administrative Hearings
Wallace State office Building – Third Floor
Des Moines, Iowa 50319