

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DOUGLAS E WILSON
Claimant

TWIN RESTAURANT DES MOINES LLC
Employer

APPEAL 17R-UI-00137-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/09/16
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 § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 27, 2016, (reference 02) unemployment insurance decision that denied benefits based on his discharge for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on November 29, 2016. The claimant, Douglas Wilson, participated. The employer, Twin Restaurant Des Moines LLC, was not available at the number it registered for the hearing and therefore did not participate. After Administrative Law Judge James Timberland issued a decision, the employer appealed to the Employment Appeal Board (EAB) stating it did not receive the Notice of Hearing. On December 30, 2016, the EAB remanded this matter for a new hearing due to the employer's non-participation in the November 29 hearing. After the EAB remanded, due notice was issued and a hearing was scheduled to be held on February 1, 2016. The employer did not respond to the hearing notice and did not participate. Because the EAB did not vacate the original appeal decision 16A-UI-11689-JT-T, that hearing record, including any exhibits, is adopted and incorporated herein. No additional exhibits were offered.

ISSUE:

Should the original appeal decision be adopted?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer, failed to respond to the hearing notice instruction and provide a telephone number at which it could be reached, nor did it request a postponement of the hearing as required by the hearing notice. The employer did not call in before the record was closed, 45 minutes after the hearing was scheduled to begin. Inasmuch as the decision was not vacated as a result of the Employment Appeal Board remand, the administrative law judge's findings of fact in appeal 16A-UI-11689-JT-T is hereby adopted and incorporated herein as the findings of fact for appeal 17R-UI-00137-NM-T.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes: Inasmuch as the decision was not vacated as a result of the Employment Appeal Board remand, the administrative law judge's reasoning and conclusions of law in appeal 16A-UI-11689-JT-T is hereby adopted and incorporated herein as the reasoning and conclusions of law for appeal 17R-UI-00137-NM-T. Benefits are allowed.

Iowa Admin. Code r. 871-26.14(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 provide 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.

The employer did not register a telephone number so it could be contacted for the hearing, as directed by the hearing notice. Employer did not call after the record had been closed, 45 minutes after the scheduled hearing time, and did not establish good cause to reopen the hearing record. The administrative law judge concludes that inasmuch as the decision was not vacated as a result of the Employment Appeal Board remand, the administrative law judge's reasoning and conclusions of law in appeal 16A-UI-11689-JT-T is hereby adopted and incorporated herein as the reasoning and conclusions of law for appeal 17R-UI-00137-NM-T. Benefits are allowed.

DECISION:

Inasmuch as the decision was not vacated as a result of the Employment Appeal Board remand, the administrative law judge's decision in appeal 16A-UI-11689-JT-T is hereby adopted and incorporated herein as the decision for appeal 17R-UI-00137-NM-T. Benefits are allowed, provided claimant is otherwise eligible.

Nicole Merrill
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Decision Dated and Mailed

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