

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

RAESHAWN S DAVIS
Claimant

APPEAL NO: 16A-UI-04925-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION
Employer

OC: 04/03/16
Claimant: Respondent (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:

The employer filed a timely appeal from the April 25, 2016, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible, and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant's April 7, 2016 was not based on a current act. A notice of hearing was mailed to the parties' last-known addresses of record for a telephone hearing to be held at 9:00 a.m. on May 12, 2016. Claimant Raeshawn Davis appeared for the hearing. Maxine Piper of Barnett Associates appeared at the time of the hearing without any employer witnesses and unprepared to proceed with the hearing in the absence of witnesses. Based upon the employer/appellant's failure to participate in the hearing and the 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 employer/appellant not participating in the hearing?

FINDINGS OF FACT:

The employer, Qwest Corporation, is the appellant in this matter. The employer filed a timely appeal from the April 25, 2016, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible, and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant's April 7, 2016 discharge was not for a current act. On May 2, 2016, the Appeals Bureau mailed proper notice of the hearing to the parties' last-known addresses of record to alert them to the telephone appeal hearing set for 9:00 a.m. on May 12, 2016. On May 9, 2016, claimant Raeshawn registered a telephone number where she could be reached for the hearing. On May 10, 2016, Barnett Associates submitted proposed exhibits on behalf of the employer. On the afternoon of May 11, 2016, Barnett Associates faxed a postponement request to the Appeals Bureau in which Hope Summers, Hearings Manager, stated: "We are requesting a postponement of the case referenced above as the employer's firsthand witness, Elizabeth Leonetti, is currently on vacation and unable to participate. She is the only person with firsthand knowledge." Within an hour of the Appeals Bureau's receipt of the postponement notice, the administrative law judge

left a voicemail message for Ms. Summers in which the administrative law judge denied the postponement request due to the untimeliness of the request and the lack of good cause shown. At 8:58 a.m. on May 12, 2016, Barnett Associates registered a number for Barnett Associates representative Maxine Piper on the Clear2There system. At 9:00 a.m. on May 12, 2016, the administrative law judge contacted the claimant and Ms. Piper to proceed with the appeal hearing. Ms. Piper clarified that she was only appearing for the purpose of renewing the postponement request on the record. Ms. Piper advised that Ms. Leonetti was on vacation, was about to go for a horseback ride and, therefore, would not appear for the hearing. The administrative law judge again denied the postponement request based on the untimeliness of the request and the lack of good cause shown. Ms. Piper indicated that she was unprepared to go forward with the hearing without Ms. Leonetti. The administrative law judge indicated he would enter a decision indicating the employer had defaulted on its appeal.

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.

Iowa Administrative Code rule 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 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.

Iowa Administrative Code rule 871-26.8(2) provides:

A hearing may be postponed by the presiding officer for good cause, either upon the presiding officer's own motion or upon the request of any party in interest. A party's request for postponement may be in writing or oral, provided the oral request is tape-recorded by the presiding officer, and is made not less than three days prior to the scheduled hearing. A party shall not be granted more than one postponement except in the case of extreme emergency.

The employer received appropriate notice of the hearing. The employer made an untimely postponement request less than 24 hours before the scheduled hearing. Ms. Leonetti's vacation and her decision to go horseback riding instead of participating as a witness in the appeal hearing did not provide good cause to postpone the appeal hearing. The employer's election not to provide Ms. Leonetti or a substitute witness for the hearing did not provide good cause to postpone the appeal hearing. The employer/appellant appealed the representative's decision but failed to participate in the hearing. The employer/appellant has therefore defaulted on its appeal pursuant to Iowa Code §17A.12(3) and Iowa Admin. Code r. 871-24.14(7), and the representative's decision remains in force and effect.

If the employer/appellant disagrees with this decision, pursuant to the rule, the employer/appellant must make a written request to the administrative law judge 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 employer/appellant from participating in the hearing at its scheduled time.

DECISION:

The April 25, 2016, reference 01, decision is affirmed. The decision that allowed benefits to the claimant provided she was otherwise eligible, and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant's April 7, 2016 was not based on a current act, remains in effect.

James E. Timberland
Administrative Law Judge
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Iowa Workforce Development
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Decision Dated and Mailed

jet/pjs