

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEIRSTIN N CURTIS

Claimant

APPEAL NO: 15A-UI-10144-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EGS CUSTOMER CARE INC

Employer

OC: 08/16/15

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 an appeal from the September 1, 2015, reference 03, unemployment insurance 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 claimant's June 2014 separation had been adjudicated on a prior claim and that the prior decision remained in effect. Notices of hearing were mailed to the parties' last-known addresses of record for a telephone hearing to be held at 9:05 a.m. on September 23, 2015. At the time of the hearing, the employer representative and proposed witnesses were not available at the telephone number provided for the hearing and did not participate in the hearing. The claimant did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. 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 parties were properly notified of the scheduled consolidated hearing on this appeal. The employer is the appellant in this matter and in a companion appeal. The employer's representative of record is TALX/Equifax and the employer's notice of the hearing was directed to that representative of record. On September 22, 2015, TALX/Equifax responded to the hearing notice by registering a number where the employer representative, Turkessa Newsone, and the additional proposed witnesses, Mike Swanson and Shane Russell, could be reached for the hearing. At the scheduled start of the hearing, the administered of law judge telephoned the number registered for the employer. On the first attempt, the call was routed to the voice mailbox of Ms. Newsone, where the administrative judge left a message. On the second attempt, the administrative law judge followed a voice prompt to contact the employer's switchboard and spoke to a supervisor, Tammy Mason. Ms. Mason advised that none of the

three listed participants was at the workplace, that Ms. Mason lacked any information regarding the matter, and that the employer would accordingly not be participating in the hearing. The employer had not requested a postponement of the hearing as required by the hearing notice.

The September 1, 2015, reference 03, unemployment insurance decision allowed benefits to the claimant provided she was otherwise eligible and held the employer's account could be charged for benefits, based on an Agency conclusion that claimant's June 2014 separation had been adjudicated on a prior claim and that the prior decision remained in effect.

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. 871-26.14(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 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 employer/appellant appealed the representative's decision but failed to participate in the hearing. The employer/appellant has therefore defaulted on employer 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 September 1, 2015, reference 03, unemployment insurance 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 the conclusion that the June 2014 separation had been previously adjudicated, remains in effect.

James E. Timberland
Administrative Law Judge
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Decision Dated and Mailed

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