

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENNY J SARGEANT
Claimant

APPEAL NO. 14A-UI-06377-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CNH AMERICA LLC
Employer

OC: 10/06/13
Claimant: Respondent (6)

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

STATEMENT OF THE CASE:

The employer appealed a representative's June 10, 2014 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account is subject to charge because the claimant had been discharged for nondisqualifying reasons. Notices of hearing were mailed to the parties' last known addresses of record informing them a telephone hearing would be held on July 14 at 1 p.m. A review of the Appeals Bureau's conference call system shows the employer/appellant was not available at the telephone number provided for the hearing and did not participate in the hearing. When the employer's witness was called for the hearing, a message was left for her to contact the Appeals Bureau immediately. The employer did not contact the Appeals Bureau on July 14, 2014.

ISSUE:

Should the appeal be dismissed when the employer/appellant does not participate in the hearing?

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The employer/appellant was not available at the telephone number provided for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The representative's June 10 determination concluded the claimant was qualified to receive unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedures Act at Iowa Code § 17A.12(3) provides that if a party fails to appear or participate in a hearing after proper service of notice, the judge may enter a default decision or proceed with the hearing and make a decision in the absence of the party. The statute further states that if a party makes a timely request to vacate the decision and shows

good cause for failing to appear, the judge shall vacate the decision and conduct another hearing.

The Agency rules at IAC 871 26.14(7) provide that if the appealing 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 judge 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 and shows good cause for reopening the hearing. The rules further state that failure to read or follow the instructions on the notice of hearing is not good cause for reopening the record. 871 IAC 871 26.14(7)c.

The employer/appellant appealed the representative's June 10 determination, but failed to participate in the hearing. The employer/appellant defaulted on its appeal. Based on Iowa Code § 17A.12(3) and 871 IAC 871 24.14(7), the June 10 determination decision remains in full force and effect.

If the employer/appellant disagrees with this decision, a request must be made 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 representative's June 10, 2014 determination (reference 01) is affirmed. As of May 18, 2014, the claimant remains qualified to receive benefits provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
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Decision Dated and Mailed

dlw/css