

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAWN M BERGESON**  
Claimant

**APPEAL NO: 15A-UI-05837-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MARSDEN BLDG MAINTENANCE LLC**  
Employer

**OC: 04/05/15**  
**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 May 6, 2015, reference 01, 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 the claimant was discharged for no disqualifying reason on April 21, 2015. Notices of hearing were mailed to the parties' last-known addresses of record for a telephone hearing to be held at 1:00 p.m. on July 6, 2015. Claimant Dawn Bergeson was available for the hearing. Employer representative RoxAnne Rose of ADP/Equifax was initially unavailable for the hearing, but made herself available at 1:21 p.m. The employer witness, Bill Hegland, was not available for the hearing at the number the employer representative provided for him. The employer representative advised that she had no evidence to present and would not be participating in the hearing, given the employer's failure to make itself available to 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 employer is the appellant in this matter. The parties were properly notified of the July 6, 2015, 1:00 p.m. hearing on this appeal by notice that mailed to the parties last-known addresses of record on May 28, 2015. The claimant was available for the hearing. At the time set for the hearing, the administrative law judge initially made two attempts to reach the employer representative, RoxAnne Rose of ADP/Equifax, and two attempts to reach the employer's witness, Bill Hegland of Marsden Building Maintenance, L.L.C. Ms. Rose did not answer and the administrative law judge left two messages before her. Mr. Hegland did not answer and his voice mailbox provided a message that it had not been set up to receive messages. Before the administrative law judge closed the record and dismissed the claimant at 1:19 p.m. the administrative law judge made a third attempt to reach Ms. Rose and a third attempt to reach

Mr. Hegland. Ms. Rose again did not answer and the administrative law judge left a voicemail message. Someone answered at Mr. Hegland's number and then they terminated the call.

At 1:21 p.m., Ms. Rose contacted the Appeals Section to ask whether the appeal had been dismissed. The administrative law judge immediately called the claimant and Ms. Rose. Ms. Rose advised that she had been detained in a Georgia hearing. Ms. Rose further advised that she did not have any evidence to present in light of the employer's failure to respond to her numerous attempts to contact the employer by email and by phone over the last eight business days. Ms. Rose advised that she would not be participating in the hearing, given the employer's failure to make itself available for the hearing and that she would "have to take a default" decision in the matter. The employer did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. As of the administrative law judge's submission of this decision at 1:52 p.m. on July 6, 2015, the employer has not made itself available for the hearing.

The May 6, 2015, reference 01, unemployment insurance decision allowed benefits to the claimant provided she was otherwise eligible and held that the employer's account could be charged for benefits, based on an Agency conclusion that the claimant was discharged for no disqualifying reason on April 21, 2015.

#### **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 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 appellant from participating in the hearing at its scheduled time.

**DECISION:**

The Claims May 6, 2015, reference 01, 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 April 21, 2015 separation, remains in effect.

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James E. Timberland  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
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Des Moines, Iowa 50319-0209  
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Decision Dated and Mailed

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