

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KEITH N TATE**  
Claimant

**APPEAL NO: 16A-UI-09678-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WASHINGTON INVENTORY SERVICES INC**  
Employer

**OC: 07/31/16**  
**Claimant: Appellant (6/R)**

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

**STATEMENT OF THE CASE:**

Keith Tate filed an appeal from the August 30, 2016, reference 02, decision that denied benefits effective July 31, 2016, based on an agency conclusion that Mr. Tate had requested and been granted a leave of absence and, therefore, was not available for work within the meaning of the law. A notice of hearing was mailed to the parties' last-known addresses of record for a telephone hearing to be held at 2:00 p.m. on September 21, 2016. Neither party responded to the hearing notice instructions to register a telephone number for the hearing. However, the claimant had provided a telephone number through an email he submitted to the Appeals Bureau on September 12, 2016. At the time set for the hearing, the claimant was not available at the number provided in the email. Based upon the claimant/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 claimant/appellant not participating in the hearing?

**FINDINGS OF FACT:**

The parties were properly notified of the scheduled hearing on this appeal. Neither party responded to the hearing notice instructions to register a telephone number for the appeal hearing set for 2:00 p.m. on September 21, 2016. On September 12, 2016, Mr. Tate submitted an email message in which he stated he would not be available for the hearing at the scheduled time due to a conflict with working hours. Mr. Tate included a telephone number in the email. On September 21, 2016, the administrative law judge used the telephone number in the email to call Mr. Tate. The administrative law judge spoke with Mr. Tate and determined that his request to reschedule the hearing was premature. At the time of the call, Mr. Tate did not know what his work hours in his new employment would be. At the time of the call, Mr. Tate agreed to make further contact with the administrative law judge prior to the appeal hearing to renew his reschedule request, if needed, after he knew what his actual work hours would be. Mr. Tate did not make further contact with the administrative law judge. At the time set for the hearing, the

administrative law judge made two attempts to reach Mr. Tate at the number he had provided in the September 12, 2016. Mr. Tate did not answer. The administrative law judge left a voice mail message for Mr. Tate at the time of each call. As of the entry of this decision, Mr. Tate has not made further contact with the Appeals Bureau.

The August 30, 2016, reference 02, decision denied benefits effective July 31, 2016, based on an agency conclusion that Mr. Tate had requested and been granted a leave of absence and, therefore, was not available for work within the meaning of the law.

### **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 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.

The claimant/appellant appealed the representative's decision but failed to participate in the hearing. The claimant/appellant has therefore defaulted on his 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 claimant/appellant disagrees with this decision, pursuant to the rule, the claimant/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 claimant/appellant from participating in the hearing at its scheduled time.

**DECISION:**

The August 30, 2016, reference 02, decision is affirmed. The decision that denied benefits effective July 31, 2016, based on an agency conclusion that the claimant had requested and been granted a leave of absence and, therefore, was not available for work within the meaning of the law, remains in effect.

This matter will be remanded to the Benefits for adjudication of the separation issues and for determination of whether the claimant has been able to work and available for work subsequent to the period affected by the August 30, 2016, reference 02, decision.

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James E. Timberland  
Administrative Law Judge  
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Decision Dated and Mailed

jet/pjs