

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RACHEL N SANDERS**  
Claimant

**APPEAL NO: 16A-UI-11267-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA CVS PHARMACY LLC**  
Employer

**OC: 12/20/09**  
**Claimant: Appellant (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:**

Sherale Bell filed an appeal on behalf of claimant Rachel Sanders that was in effect a late appeal from the January 27, 2010, reference 02, decision that disqualified Ms. Sanders for benefits and that relieved the employer of liability for benefits, based on an agency conclusion that Ms. Sanders was discharged on December 13, 2009 for misconduct in connection with the employment. 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 November 2, 2016. The hearing in this matter was consolidated with the hearing in Appeal Number 16A-UI-11268-JTT. Ms. Sanders provided a telephone number for the hearing and was initially available at that number at the time of the hearing. Because Ms. Sanders was driving a vehicle at the time she took the administrative law judge's call, it was necessary to adjourn the hearing for five minutes to give Ms. Sanders an opportunity to arrive at her destination before going forward with the appeal hearing. However, after the brief adjournment, Ms. Sanders was not available at the number she had provided for the appeal hearing and did not participate in the hearing. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing. 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 November 2, 2016, 9:00 a.m., appeal hearing by notice that was mailed to the parties' last-known address of record on October 19, 2016. According to the Clear2There system, Ms. Sanders responded to the hearing notice on October 20, 2016 and registered a telephone number where she could be reached for the hearing: 319-610-9293. At 9:00 a.m. on November 2, 2016, the administrative law judge reached Ms. Sanders at the telephone number she had provided for the hearing and commenced the hearing. It immediately became apparent from the ambient noise at Ms. Sanders' end of the call, that

Ms. Sanders was riding in a vehicle. Ms. Sanders confirmed that she was driving a vehicle, was on her way to work, and was scheduled to work at 9:30 a.m. Ms. Sanders advised that she was three minutes from her work place. In light of the safety issue, the administrative law judge adjourned the hearing for five minutes and agreed to call Ms. Sanders at 9:08 a.m. to provide her an opportunity to safely reach her destination. Ms. Sanders agreed to the brief adjournment. From 9:08 a.m. to 9:12 a.m., the administrative law judge made four attempts to reach Ms. Sanders at the number she had provided for the hearing. Ms. Sanders did not answer any of the calls. On three out of four of the calls, Ms. Sanders' telephone service provider provided a message that "the subscriber cannot receive messages at this time." On the third out of four attempts to reach Ms. Sanders, the Clear2There system eventually returned a message that there was no answer to the call. In light of Ms. Sanders' failure to make herself available for the appeal hearing, the administrative law judge closed the hearing record at 9:12 a.m. To provide Ms. Sanders with additional opportunity to participate in the hearing record, the administrative law judge waited until 10:00 a.m. to enter the present default decision. Ms. Sanders has not made further contact with the Appeals Bureau. Ms. Sanders did not request a postponement of the hearing as required by the hearing notice.

The January 27, 2010, reference 02, decision disqualified Ms. Sanders for benefits and relieved the employer of liability for benefits, based on an agency conclusion that Ms. Sanders was discharged on December 13, 2009 for misconduct in connection with the employment. The appeal deadline for the decision was February 6, 2010. Ms. Sanders' appeal was filed on October 17, 2016.

#### **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 her 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 January 27, 2010, reference 02, decision that disqualified the claimant for benefits and that relieved the employer of liability for benefits, based on an agency conclusion that the claimant was discharged on December 13, 2009 for misconduct in connection with the employment, remains in effect.

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James E. Timberland  
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Decision Dated and Mailed

jet/pjs