

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

OSCAR C WINBUSH

Claimant

APPEAL NO: 14A-UI-01474-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 01/12/14

Claimant: Appellant (6)

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

STATEMENT OF THE CASE:

An appeal was filed from a representative's unemployment insurance decision dated January 31, 2014 (reference 01) that concluded Oscar C. Winbush (claimant/appellant) was not eligible for unemployment insurance benefits after a separation from employment from Tyson Fresh Meats, Inc. (employer/respondent). Notices of hearing were mailed to the parties' last-known addresses of record for a telephone hearing to be held at 10:30 a.m. on March 3, 2014. A review of the Appeals Section's conference call system indicates that the claimant/appellant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. The administrative law judge considered the record closed at 10:40 a.m. At 10:41 a.m., the claimant/appellant called the Appeals Section and requested that the record be reopened. Based on the 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.

ISSUES:

Should the hearing record be reopened? Should the appeal be dismissed based on the claimant/appellant not participating in the hearing?

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The claimant/appellant failed to provide a telephone number at which the appellant could be reached for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The claimant/appellant received the hearing notice prior to the March 3, 2014 hearing. The instructions inform the parties that if the party does not contact the Appeals Section and provide the phone number at which the party can be contacted for the hearing, the party will not be called for the hearing. The first time the claimant/appellant directly contacted the Appeals Section was on March 3, 2014, eleven minutes after the scheduled start time for the hearing.

The hearing notice was mailed to the claimant's address of record on February 12, 2014. It is reasonably presumed that the hearing notice arrived at that address within a few days thereafter. The claimant was not staying at that residence at that immediate time, but failed to check his mail which was being sent to that address. He then left Iowa on a trip to Indiana on or about February 22, returning to his residence of record on March 2. He saw the hearing notice at that time but realized he could not call into the Appeals Section that day because it was a Sunday. He realized that he needed to call into the Appeals Section on the morning of March 3, but did not do so until after the scheduled time for the hearing.

The representative's decision had concluded that the claimant/appellant was not eligible for unemployment insurance benefits.

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 871 IAC 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 first issue in this case is whether the claimant's request to reopen the hearing should be granted or denied. After a hearing record has been closed the administrative law judge may not take evidence from a non-participating party but can only reopen the record and issue a new notice of hearing if the non-participating party has demonstrated good cause for the party's failure to participate. 871 IAC 26.14(7)b. The record shall not be reopened if the administrative law judge does not find good cause for the party's late contact. *Id.* Failing to read or follow the instructions on the notice of hearing are not good cause for reopening the record. 871 IAC 26.14(7)c.

The first time the claimant called the Appeals Section for the March 3, 2014 hearing was after the hearing had been closed. Although the claimant/appellant intended to participate in the hearing, the claimant/appellant failed to read or follow the hearing notice instructions and did not contact the Appeals Section prior to the hearing. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. The claimant/appellant did not establish good cause to reopen the hearing. Therefore, the claimant/appellant's request to reopen the hearing is denied.

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 871 IAC 24.14(7), and the representative's decision remains in force and effect.

DECISION:

The representative's decision (reference 01) dated January 31, 2014 is affirmed. The decision denying benefits remains in effect.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css