

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KRISTIN E QUACKENBUSH
Claimant

APPEAL 18R-UI-11216-DG-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

**OC: 09/09/18
Claimant: Respondent (2)**

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 October 5, 2018, (reference 02) unemployment insurance decision that allowed benefits. An appeals hearing was held on October 30, 2018 before Administrative Law Judge, Teresa Hillary. Judge Hillary's decision reversed the fact-finder's decision dated October 5, 2018 and held that claimant had been overpaid benefits. Claimant appealed Judge Hillary's decision to the Employment Appeal Board and the matter was remanded back to the Appeals Bureau. Claimant's address of record has been as stated above during the entire claim process thus far. Claimant received the fact-finding interview notice at that address of record. At each stage of the appeal process thereafter, claimant has argued that she has not received due notice. Non-receipt of the notice for the two hearings scheduled after the fact-finding interview is not credible. Claimant has a duty to regularly and frequently retrieve her mail and cannot now claim non-receipt. After the Employment Appeal Board (EAB) remanded, due notice was issued, a hearing was scheduled to be held on December 3, 2018. The employer did respond to the hearing notice for the second time. The claimant did not respond to the hearing notice and did not participate. Because the EAB did not vacate the original appeal decision 18A-UI-10336-H2-T, that hearing record, including any exhibits, is adopted and incorporated herein. No additional exhibits were offered.

ISSUE:

Should the original appeal default decision be adopted?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Inasmuch as the decision was not vacated as a result of the Employment Appeal Board remand, the administrative law judge's findings of fact in appeal 18A-UI-10336-H2-T is hereby adopted and incorporated herein as the findings of fact for appeal 18R-UI-11216-DG-T.

REASONING AND CONCLUSIONS OF LAW:

Iowa Admin. Code r. 871-26.14(7) provides:

Conduct of hearings.

(7) 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 provide in Iowa Code section 17A.12(3). The record may be reopened if the absent party makes a request in writing 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.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

For the reasons that follow, the administrative law judge concludes that inasmuch as the decision was not vacated as a result of the Employment Appeal Board remand, the administrative law judge's reasoning and conclusions of law in appeal 18A-UI-10336-H2-T is hereby adopted and incorporated herein as the reasoning and conclusions of law for appeal 18R-UI-11216-DG-T.

DECISION:

Inasmuch as the decision was not vacated as a result of the Employment Appeal Board remand, the administrative law judge's decision in appeal 18A-UI-10336-H2-T is hereby adopted and incorporated herein as the decision for appeal 18R-UI-11216-DG-T. The October 5, 2018, (reference 02) decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant has been overpaid unemployment insurance benefits in the amount of \$2,520.00 and she is obligated to repay the agency those benefits. The employer did participate in the fact-finding interview and their account shall not be charged.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/scn