

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHANIE M GORDY
Claimant

APPEAL NO. 14A-UI-08084-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HILL PHOENIX INC
Employer

OC: 12/22/13
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:

An appeal was filed from an unemployment insurance decision dated July 29, 2014, reference 02, that concluded the claimant voluntarily quit employment with good cause attributable to the employer. 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 August 27, 2014. The employer did not participate in the hearing.

ISSUE:

Should the appeal be dismissed because the employer did not participate in the hearing?

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal to be held at 10:30 a.m. on August 27, 2014. A review of the Appeals Bureau's conference call system shows that no one with the employer responded to the hearing notice and did not provide a telephone number at which a representative could be reached for the hearing. Russ Curry, the Director of Human Resources, called in late at 10:52 a.m. after the hearing had closed. He said he thought he had called in, but admitted he did not have the confirmation number given to parties by the clerk. He also admitted that he had been informed by clerks in past cases to call in if he had not received a call within five to ten minutes after the scheduled time of the hearing.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedures Act at Iowa Code § 17A.12(3) provides that if a party fails to appear or participate in a hearing after proper service of notice, the judge may enter a default decision or proceed with the hearing and make a decision in the absence of the party. The statute further states that if a party makes a timely request to vacate the decision and shows good cause for failing to appear, the judge shall vacate the decision and conduct another hearing.

The Agency rules at Iowa Admin. Code r. 871-26.14(7) provide that if the appealing 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 judge 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 and shows good cause for reopening the hearing. The rules further state that failure to read or follow the instructions on the notice of hearing is not good cause for reopening the record. Iowa Admin. Code r. 871-26.14(7)c.

I have carefully considered the information provided by Mr. Curry. The preponderance of the evidence establishes the employer neglected to call in for the hearing to provide a telephone number. He did not have a confirmation number given to individuals as proof of calling in. He called in over 20 minutes after the scheduled time of the hearing.

In *Dealers Warehouse Co. v. Wahl & Associates*, 216 N.W.2d 391, 394 (Iowa 1974), the Iowa Supreme addressed the standard of good cause in deciding whether to set aside a default judgment in a civil case:

What constitutes good cause in relation to grounds of mistake, inadvertence and excusable neglect has been settled in our cases. Good cause is a sound, effective, truthful reason, something more than an excuse, a plea, apology, extenuation, or some justification for the resulting effect. The movant must show his failure to defend was not due to his negligence or want of ordinary care or attention, or to his carelessness or inattention. He must show affirmatively he did intend to defend and took steps to do so, but because of some misunderstanding, accident, mistake or excusable neglect failed to do so. Defaults will not be vacated where the movant has ignored plain mandates in the rules with ample opportunity to abide by them.

These standards should apply equally in to good cause determination under Iowa Administrative Procedures Act at Iowa Code § 17A.12(3) and Iowa Admin. Code r. 871-26.14(7)c. In addition, the rules provide that failure to read or follow the instructions on the notice of hearing is not good cause for reopening the record. Under the circumstances of this case, the failure to provide the name and the phone number of the person participating in the hearing was due to neglect and good cause to reopen has not been established.

The employer has therefore defaulted on its appeal, pursuant to Iowa Code § 17A.12(3) and Iowa Admin. Code r. 871-24.14(7), and the decision remains in force and effect.

DECISION:

The unemployment insurance decision dated July 29, 2014, reference 02, is affirmed. The decision granting benefits remains in effect.

Steven A. Wise
Administrative Law Judge
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Decision Dated and Mailed

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