

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

EDDIE E LEACH
Claimant

CEMEN TECH INC
Employer

APPEAL 17A-UI-07104-B2
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 06/25/17
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:

An appeal was filed from the July 14, 2017, (reference 01) unemployment insurance decision that concluded claimant was not eligible for unemployment benefits after a separation from employment. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for August 1, 2017. The appellant/claimant requested an in-person hearing on his appeal, then failed to show for the hearing. 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.

ISSUE:

Should the appeal be dismissed based on the appellant's failure to appear and participate?

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing for this appeal. The appellant failed to show for the hearing. After waiting fifteen minutes, claimant's name was called three times at the meeting foyer of 1000 East Grand Avenue. No one responded to the calls for the claimant.

The hearing notice instruction specifically advises parties, "If you do not participate in the hearing, the judge may dismiss the appeal or issue a decision without considering your evidence or witness(es)."

As a courtesy to the appellant the record was left open for 15 minutes after the hearing start time to give the appellant a reasonable opportunity to participate. Holding the appellant in default for failure to appear and participate during a 15 minute window after the hearing start time is entirely reasonable considering the non-appealing party had to take time out of its day to come to the hearing with witnesses, and claimant did not show up.

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

Due process requires notice and an opportunity to be heard, both of which were provided to the parties. This rule does not provide exceptions for good intentions and/or a party contacting the Appeals Bureau within a reasonable amount of time after the hearing is scheduled. It can be assumed an appellant intends to participate in the hearing simply by the fact an appeal is filed, but their responsibility does not end there and all parties are required to follow the specific written instructions printed on the hearing notice. Due process does not require the non-appealing party and the Unemployment Insurance Appeals Bureau to wait for indefinite periods to see if an appellant wants or remembers to prosecute the appeal. The appellant filed the appeal and is held solely responsible for going forward with the case in an expeditious manner. The rule holds appellant in default if not present at the start of hearing. As a courtesy, appellant was granted additional time not required by statute or rule. Here, notwithstanding additional time, notice and opportunity, the appellant failed to prosecute the case expeditiously and as such the appellant is in default and the appeal shall be dismissed. Iowa Code §17A.12(3) and Iowa Admin. Code r. 24.14(7). The representative's decision remains in force and effect.

Pursuant to the rule, the 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 appellant from participating in the hearing at its scheduled time. The appellant also has the option to appeal the decision directly to the Employment Appeal Board, whose address is listed at the top right caption.

DECISION:

The July 14, 2017, (reference 01) unemployment insurance decision denying benefits remains in effect as the appellant is in default and the appeal is dismissed.

Blair A. Bennett
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

Decision Dated and Mailed

bab/scn