

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARTIN A DISTELHORST
Claimant

APPEAL 16A-UI-11162-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BURLINGTON/WEST BURLINGTON AREA
Employer

OC: 09/11/16
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 October 4, 2016, (reference 01) that allowed benefits based upon voluntarily quitting the employment. Notice of hearing was mailed to the parties' last-known addresses of record for a telephone hearing to be held at 10:00 a.m. on October 31, 2016. A review of the Appeals Bureau's conference call system after 10:15 a.m. the same day shows the employer/appellant failed to respond to the hearing notice and register a telephone number at which it could be reached for the hearing. The appellant called after the hearing record was closed.

ISSUES:

Should the hearing record be reopened?
Should the appeal be dismissed based upon the appellant not participating in the hearing?

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing for this appeal. Official notice of the Clear2there hearing control screen is taken to establish that appellant did not call or register online with the Appeals Bureau to provide a telephone number and/or name of a representative. Nor did the representative call the number on the hearing notice to ask for a postponement, assistance, more information, or to provide contact information. After the hearing record was closed at the end of the grace period, the appellant called to report it did not register in response to the hearing notice instructions because the employer believed the Appeals Bureau already had its telephone number.

The front of the hearing notice instruction specifically advises in English and Spanish:

MON OCT 31, 2016 Date
10:00 AM Iowa Time

You must register for the hearing immediately!

You must register your phone number and the name(s) and phone number(s) of any witness(es) with the Appeals Bureau. If you do not register, the judge will not be able to call you or your witness(es) for the hearing.

The back page of the hearing notice provides further instruction and warning in both languages:
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 a minimum grace period of 15 minutes after the hearing start time to give the appellant a *reasonable* opportunity to participate. Allowing additional time would prejudice the non-appealing party for appearing in a timely manner. Holding the appellant in default for failure to appear and participate during a 15-minute window after the hearing start time is reasonable.

The representative's decision concluded that the claimant was eligible for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedure 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.**

Agency rules at Iowa Admin. Code r. 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. (Emphasis added.)

The Iowa Supreme Court has opined that a default *should not be set aside for ordinary negligence or want of ordinary care*. Defaults should not be set aside where the movant ignores plain instruction with ample opportunity to comply. See *Houlihan v. Emp't Appeal Bd.*, 545 N.W.2d 863 (Iowa 1996). (Emphasis added.) Here the clear directive is to read the hearing notice and register a telephone number where the party can be reached for the hearing. The second part of that directive is to be available at the number provided at the date and time of the hearing. Further, if the party misses or does not receive the hearing call, the party has telephone numbers on the hearing notice at which to inquire. Due process requires notice and an opportunity to be heard, both of which were provided to each party. It is assumed an appellant intends to participate in the hearing simply by the fact that an appeal is filed, but the appellant's responsibility does not end there. Each party is held to the same standard and is required to follow the prominent, specific written instructions printed on the hearing notice in order to participate in an appeal hearing. The appellant filed the appeal and is held solely responsible for going forward with the case in a prompt and deliberate manner. The rule holds an appellant in default if not present *at the start* of hearing. As a courtesy, appellant was granted an additional 15-minute grace period not required by statute or rule. *The rule does not provide exceptions for good intentions and/or a party contacting the Appeals Bureau within a 'reasonable' or certain amount of time after the hearing is scheduled.* The employer argued it did not register because it was confused by the differing language on the hearing notice regarding registering for the hearing and the potential exhibit cover sheet stating that if the telephone number has not already been "provided" the party should "do so now or you will not be called for the hearing." The cover sheet then goes on to give the same registration instructions as the hearing notice and provides toll-free telephone numbers. The employer did not register or call the Appeals Bureau in response to the hearing notice mailed on October 18, 2016. The claimant received the same documents and notices and properly registered for the hearing on October 27. Here, notwithstanding notice, opportunity and additional time, the appellant failed to prosecute the case at the appointed date and time without providing a good-cause reason for the delay or failure to do so. Accordingly the appellant is in default and the appeal shall be dismissed. Iowa Code § 17A.12(3) and Iowa Admin. Code r. 26.14(7). The unemployment insurance decision remains in force and effect.

DECISION:

The appellant is in default and the appeal is dismissed. The record shall not be reopened. The unemployment insurance decision dated October 4, 2016, (reference 01) granting benefits remains in effect.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs