

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MICHAEL H VANDERMILLEN
Claimant

APPEAL NO: 21O-UI-06278-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAPTIVE PLASTICS LLC
Employer

OC: 04/19/20
Claimant: Respondent (6)

Iowa Code § 96.4(3) – Able & Available
Iowa Code § 17A.12(3) – Default Decision (Second Default)
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

This matter was before the administrative law judge based on an Employment Appeal Board remand in Hearing Number 21B-UI-013608. The employer filed a timely appeal from the August 6, 2020, reference 01, decision that held the claimant was eligible for benefits effective April 19, 2020, provided the claimant met all other eligibility requirements, based on the deputy's conclusion that the claimant was able to work, available for work, but on a short-term layoff. A notice of hearing was mailed to the parties' last-known addresses of record for a telephone hearing to be held at 9:00 a.m. on May 6, 2021. The claimant, Michael Vandermillen, registered a telephone number and was available for the hearing. The employer named Julie Ryan as the employer's representative and provided a telephone number for Ms. Ryan. However, the employer was not available at the registered number at the time of the hearing. Based upon the employer/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 upon the employer/appellant not participating in the hearing?

FINDINGS OF FACT:

The employer is the appellant in this matter. This matter was previously set for hearing on October 2, 2020 in Appeal Number 20A-UI-09923-JTT. The employer failed to register for or appear for the October 2, 2020. In Hearing Number 21B-UI-013608, the Employment Appeal Board remanded the matter for a new hearing, but included the following warning: "We caution the Employer that, barring exceptional circumstances, we will not again excuse a failure to appear and participate in the hearing."

The employer was properly notified of the appeal hearing set for 9:00 a.m. on May 6, 2021 through the hearing notice that was mailed to the employer's last-known address of record on March 31, 2021. The employer did not participate in the hearing or request a postponement of

the hearing as required by the hearing notice. On May 3, 2021, the employer registered Julie Ryan as the employer's representative and registered a telephone number where Ms. Ryan could be reached for the hearing. At the time of the hearing, the administrative law judge made two attempts to reach Ms. Ryan at the registered number. On each attempt, no one answered and the call was eventually routed to voicemail. The voicemail system confirmed the number as Ms. Ryan's number. The administrative law judge left a message for Ms. Ryan in connection with each call. The employer did not respond to the messages and did not otherwise appear for the appeal hearing.

The August 6, 2020, reference 01, decision held the claimant was eligible for benefits effective April 19, 2020, provided the claimant met all other eligibility requirements, based on the deputy's conclusion that the claimant was able to work, available for work, but on a short-term layoff.

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.

Iowa Administrative Code rule 871-26.14(7) provides:


(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 to reopen the hearing in writing 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.

The employer/appellant appealed the representative's decision but failed to participate in the hearing *a second time*. The employer/appellant has therefore defaulted on its appeal pursuant to Iowa Code §17A.12(3) and Iowa Admin. Code r. 871-24.14(7), and the representative's decision remains in force and effect.

DECISION:

The employer defaulted on its appeal. The appeal is dismissed. The August 6, 2020, reference 01, decision that held the claimant was eligible for benefits effective April 19, 2020, provided he met all other eligibility requirements, based on the deputy's conclusion that the claimant was able to work, available for work, but on a short-term layoff, remains in effect.



James E. Timberland
Administrative Law Judge

May 14, 2021
Decision Dated and Mailed

jet/scn