

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AERIAL L HESS
Claimant

APPEAL NO: 15A-UI-05835-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 04/19/15)
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:

Aerial Hess filed a late appeal from the May 1, 2015, reference 01, unemployment insurance decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that Ms. Hess had voluntarily quit on April 17, 2015 without 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 11:00 a.m. on July 6, 2015. The employer was available for the hearing through Jill Devoogd. Ms. Hess was not available at the telephone number provided for the hearing and did not participate in the hearing. Based upon the claimant/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 claimant/appellant not participating in the hearing?

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The claimant/appellant, Ariel Hess, was not available at the telephone number provided for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. The hearing was set for 11:00 a.m. on July 6, 2015. At the time set for the hearing, the administrative law judge was detained in another hearing. The administrative law judge asked an Appeals Section clerk to notify the parties that the administrative law judge was detained in a hearing and would get to the parties as soon as possible. The clerk was able to reach and speak with the employer representative. The clerk reported to the administrative law judge that the claimant's phone number was no longer in service. Later in the hour, when the administrative law judge had concluded the other matter, the administrative law judge contacted the employer representative, but was unable to reach Ms. Hess. The administrative law judge made two attempts to reach Ms. Hess at the number she had provided for the hearing. On both attempts, the Clear2There system tried for an

extended period to connect with Ms. Hess, but eventually provided a message that there was no answer at the number.

The May 1, 2015, reference 01, unemployment insurance decision disqualified Ms. Hess for benefits and relieved the employer of liability for benefits, based on an Agency conclusion that Ms. Hess had voluntarily quit on April 17, 2015 without good cause attributable to the employer.

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.

The Agency rules at Iowa Admin. Code r. 871-26.14(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 section 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.

The claimant/appellant appealed the representative's decision but failed to participate in the hearing. The claimant/appellant has therefore defaulted on her 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.

If the appellant disagrees with this decision, 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.

DECISION:

The May 1, 2015, reference 01, unemployment insurance decision is affirmed. The decision that disqualified the claimant for benefits and that relieved the employer of liability for benefits, based on the April 17, 2015 separation, remains in effect.

James E. Timberland
Administrative Law Judge
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Iowa Workforce Development
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Des Moines, Iowa 50319-0209
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Decision Dated and Mailed

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