IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

BOBBIE J TRESCOTT Claimant **EXPRESS SERVICES INC** Employer	**APPEAL NO. 20A-UI-02622-JE-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 01/26/20** **Claimant: Respondent (6)**

Iowa Code § 96.5-2-a – Discharge/Misconduct
Iowa Code § 17A.12(3) - Default Decision
871 IAC 26.14(7) - Dismissal of Appeal on Default

STATEMENT OF THE CASE:

The employer/appellant filed a timely appeal from a representative's unemployment insurance decision dated March 19, 2020, (reference 04), that concluded the claimant was eligible for unemployment insurance benefits after a separation from employment with Express Services. 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 May 1, 2020. A review of the Appeals Bureau's conference call system indicates that the employer/appellant failed to respond to the hearing notice instructing it to provide a telephone number at which it could be reached for the hearing and consequently no hearing was held in this matter.

ISSUE:

The issue is whether the underlying decision should be affirmed and the appeal should be effectively dismissed based upon the employer/appellant's failure to participate in the hearing.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. A Notice of Appeal and Hearing was mailed to both parties on April 8, 2020. There is no evidence suggesting the employer/appellant did not receive the hearing notice prior to the hearing scheduled on May 1, 2020.

The front page of the hearing notice states: "**IMPORTANT NOTICE! YOU MUST PROVIDE YOUR PHONE NUMBER TO THE APPEALS BUREAU AS SOON AS POSSIBLE.** If you do not follow these instructions, the judge will not call you for the hearing. You must also provide the name(s) and phone number(s) of any witnesses to the Appeals Bureau."

The employer/appellant failed to provide a telephone number at which it could be reached for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

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 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. Likewise, Agency rule 871 IAC 26.14(7) provides 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).

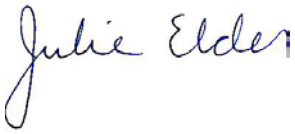
This rule does not provide exceptions for good intentions and/or a party contacting the Appeals Bureau within a reasonable amount of time after the hearing is scheduled. It can be assumed an appellant intends to participate in the hearing simply by the fact an appeal is filed, but their responsibility does not end there. All parties are required to follow the specific written instructions printed on the hearing notice. Due process requires notice and an opportunity to be heard, both of which were provided to the parties.

If the employer/appellant responds to the notice of hearing after the record has been closed, the administrative law judge shall not take the evidence of the late party. Instead, the administrative law judge shall inquire ex parte as to why the party was late in responding to the notice of hearing. For good cause shown, the record shall be reopened and cause further notice of hearing to be issued. The record shall not be reopened without a finding of good cause for the party's late response to the notice of hearing. 871 IAC 26.14(7)b. Furthermore, the rule states that failure to read or follow the hearing notice instructions shall not constitute good cause. 871 IAC 26.14(7)c.

The employer/appellant appealed the unemployment insurance decision but failed to participate in the scheduled appeal hearing. The employer/appellant has therefore defaulted on its appeal pursuant to Iowa Code § 17A.12(3) and 871 IAC 26.14(7), and the representative's decision remains in force and effect.

DECISION:

The representative's unemployment insurance decision dated March 19, 2020, (reference 04), is affirmed. The decision allowing benefits to the claimant remains in effect as the employer/appellant is in default and the appeal is dismissed.



_____
Julie Elder
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

May 5, 2020
Decision Dated and Mailed

je/scn