

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 – EI

RICK D JENSEN
Claimant

APPEAL NO: 14A-UI-01333-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

O'REILLY AUTOMOTIVE INC
Employer

OC: 12/29/13
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:

The employer appealed a representative's January 29, 2014 determination (reference 02) that concluded the claimant was eligible receive benefits because as of December 29, 2013, he was able to and available for work. Notices of hearing were mailed to the parties' last-known addresses of record informing them a telephone hearing was to be held on February 26 at 9:30 a.m. A review of the Appeals Bureau's conference call system indicates that the employer/appellant failed to respond to the hearing notice and provide a telephone number at which a representative could be reached for the hearing. Based upon 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 when the employer/appellant did not participate in the hearing?

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The employer/appellant failed to provide a telephone number at which the appellant could be reached for the hearing. The employer/appellant did not request a postponement of the hearing as required by the hearing notice.

The representative's determination concluded the claimant was eligible to receive benefit as of December 29, 2013.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedures 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. The

statute further states that if a party makes a timely request to vacate the decision and shows good cause for failing to appear, the judge shall vacate the decision and conduct another hearing.

The Agency rules at Iowa Admin. Code r. 871-26.14(7) provide 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). The record may be reopened if the absent party makes a request to reopen the hearing and shows good cause for reopening the hearing. The rules further states that failure to read or follow the instructions on the notice of hearing is not good cause for reopening the record. Iowa Admin. Code r. 871-26.14(7)c.

The employer/appellant appealed the representative's determination but failed to participate in the hearing. The employer/appellant has defaulted on its appeal. Based on Iowa Code §17A.12(3) and Iowa Admin. Code r. 871-24.14(7), the representative's determination remains in 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 representative's January 29, 2014 determination (reference 02) is affirmed. The determination holding the claimant able to and available for work as of December 29, 2013 remains in effect.

Debra L. Wise
Administrative Law Judge
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Iowa Workforce Development
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Decision Dated and Mailed

dlw/pjs