

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KARLA K PETERS
Claimant

APPEAL NO: 14A-UI-01296-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXCEPTIONAL PERSONS INC
Employer

OC: 01/11/15
Claimant: Appellant (6)

Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default/Reopening record

STATEMENT OF THE CASE:

Karla Peters filed an appeal from the January 27, 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. Peters was discharged on December 19, 2014 for misconduct in connection with the employment. Notices of hearing were mailed to the parties' last-known addresses of record, for a telephone hearing to be held at 2:00 p.m. on February 24, 2015. A review of the Appeals Bureau's conference call system indicates that the claimant/appellant, Ms. Peters, failed to respond to the hearing notice instructions to provide a telephone number at which she could be reached for the hearing. Lisa Paterno was available to represent the employer at the hearing.

At 2:55 p.m., the claimant contacted the Appeals Section in reference to the 2:00 p.m. hearing. The administrative law judge concluded the claimant had not provided good cause to reopen the hearing record.

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 appeal hearing set for 2:00 p.m. on February 24, 2015. The claimant/appellant, Karla Peters, failed to provide a telephone number at which she could be reached for the hearing. Ms. Peters did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Lisa Paterno was available for the hearing on behalf of the employer. The administrative left the hearing record open until 2:15 p.m. to give Ms. Peters further opportunity to appear for and participate in the appeal hearing. When Ms. Peters did not appear by that time, the administrative law judge closed the record and excused the employer.

At 2:55 p.m. on February 24, 2015, Ms. Peters contacted the Appeals Section in reference to the 2:00 p.m. hearing. By that time, the administrative law judge was in another hearing. The administrative law judge returned Ms. Peters call when he finished with the other hearing. At that time, Ms. Peters indicated that she had received the hearing notice on February 5 or 6, 2015. Ms. Peters said that she thought she had provided telephone number for the hearing upon receiving the hearing notice. Ms. Peters was unable to provide a control number. The Appeals Section staff would have provided Ms. Peters with a control number if she had called in a number for the appeal hearing.

The January 27, 2015, reference 01, unemployment insurance decision disqualified Ms. Peters for benefits and relieved the employer of liability for benefits, based on an Agency conclusion that Ms. Peters was discharged on December 19, 2014 for misconduct in connection with the employment.

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 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 full force and effect.

Ms. Peters' late call did not establish good cause to reopen the hearing record. Ms. Peters had not provided a telephone number for the hearing. If she had, her number would have been documented in the Clear2There system and the Appeals Section would have provided Ms. Peters with a control number as proof of the day she called and who she spoke with to provide a number for the hearing. In addition, if Ms. Peters had spoken with the Appeals Section staff to provide a number for the hearing, the staff would have told Ms. Peters that if she did not hear from the administrative law judge within five minutes of the scheduled start of the hearing, she should contact the Appeals Section right away. Ms. Peters' late contact, almost an hour after the scheduled start of the hearing and well after the record had been closed and the employer had been dismissed from the hearing, did not provide good cause to reopen the hearing record.

DECISION:

The January 27, 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 an Agency conclusion that the claimant was discharged on December 19, 2014 for misconduct in connection with the employment, remains in effect.

James E. Timberland
Administrative Law Judge
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Decision Dated and Mailed

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