

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JASMIN A MEANS COLE**

Claimant

**APPEAL 17R-UI-05691-JP-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GIT-N-GO CONVENIENCE STORES INC**

Employer

**OC: 04/03/16**

**Claimant: Respondent (4)**

Iowa Code § 96.5(1) – Voluntary Quitting

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

Iowa Code § 17A.12(3) – Default Decision

Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

Iowa Code Ch. 17A – Iowa Administrative Procedure Act

Iowa Code Ch. 96 – Iowa Employment Security Act

**STATEMENT OF THE CASE:**

The employer filed an appeal from the April 4, 2017, (reference 05) unemployment insurance decision that allowed benefits. A hearing was scheduled and conducted on May 2, 2017, and the employer participated. On May 4, 2017, administrative law judge Beth A. Scheetz issued a decision denying benefits (See appeal number: 17A-UI-03840-S1-T). Claimant did not participate in the hearing and later appealed the decision from appeal number 17A-UI-03840-S1-T to the Employment Appeal Board.

On May 31, 2017, the Employment Appeal Board remanded the case, but did not vacate the administrative law judge's decision dated May 4, 2017. After the Employment Appeal Board remanded the case, notice was issued and a hearing was scheduled to be held at 2:00 p.m. on June 15, 2017; however, the notice was mailed to claimant's old address and she did not register for the hearing. On June 15, 2017, hearing was postponed to allow a new notice of hearing be sent to the claimant's new address claimant that she provided Iowa Workforce Development via a letter dated May 11, 2017. On June 16, 2017, the Appeals Bureau mailed a new notice of hearing to claimant's new address for a hearing scheduled for June 28, 2017 at 9:00 a.m. In this case, claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the scheduled hearing and no hearing was conducted. A review of the Appeals Bureau's conference call system shows claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the scheduled hearing and no hearing was conducted. No request for postponement or accommodation was made by claimant prior to the June 28, 2017 hearing. The employer appeared at the June 28, 2017 hearing through Lanette Butt.

Because the EAB did not vacate the original appeal decision number 17A-UI-03840-S1-T, that hearing record is adopted and incorporated herein.

**ISSUE:**

Should the original appeal hearing decision be adopted?

**FINDINGS OF FACT:**

The parties were properly notified of the scheduled hearing on this appeal. The hearing for June 28, 2017 was scheduled based on claimant's appeal to the Employment Appeal Board after she failed to participate in the May 2, 2017 hearing. Claimant, Jasmine A. Means Cole, failed to respond to the hearing notice that was mailed to her on June 16, 2017 and provide a telephone number at which she could be reached for the scheduled hearing on June 28, 2017 and did not participate or request a postponement of the hearing as required by the hearing notice. Official notice of the Clear2there hearing control screen is taken to establish that claimant did not call or register online with the Appeals Bureau to provide a telephone number and/or name of a representative.

The front of the hearing notice instruction specifically advises in English and Spanish:

WED JUN 28, 2017      Date  
9:00 AM                      Iowa Time

**You must register for the hearing immediately!**

You must register your phone number and the name(s) and phone number(s) of any witness(es) with the Appeals Bureau. If you do not register, the judge will not be able to call you or your witness(es) for the hearing.

The back page of the hearing notice provides further instruction and warning in both languages:  
If you do not participate in the hearing the judge may dismiss the appeal or issue a decision without considering your evidence or witness(es).

As a *courtesy* to claimant the record was left open for a minimum of 15 minutes after the hearing start time to give claimant a *reasonable* opportunity to participate. This reasonable amount of time is appropriate because if a hearing were conducted with the other party alone it would have likely concluded in 15 minutes or less. Allowing additional time would prejudice the other party for appearing in a timely manner. Holding claimant in default for failure to appear and participate during a 15-minute window after the hearing start time is reasonable.

The administrative law judge's decision (Appeal Number: 17A-UI-03840-S1-T) concluded that claimant was disqualified for unemployment insurance benefits and had not received any benefits after her separation from employment. The employer was relieved of charges.

Having reviewed all of the evidence in the record, the administrative law judge finds: Inasmuch as the decision was not vacated as a result of the Employment Appeal Board remand, the administrative law judge's findings of fact in appeal number 17A-UI-03840-S1-T is hereby adopted and incorporated herein as the findings of fact for appeal number 17R-UI-05691-JP-T.

**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. 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 § 17A.12(3). The record may be reopened if the absent party makes a request in writing 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.
- c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

Claimant, Jasmine A. Means Cole, appealed the administrative law judge's decision in appeal number 17A-UI-03840-S1-T but failed to provide a telephone number at which she could be reached for the scheduled hearing and did not participate or request a postponement of the hearing as required by the hearing notice.

The Iowa Supreme Court has opined that a default should not be set aside for ordinary negligence or want of ordinary care. Defaults should not be set aside where the movant ignores plain mandates with ample opportunity to abide. See *Houlihan v. Emp't Appeal Bd.*, 545 N.W.2d 863 (Iowa 1996). Here the plain and simple mandate is to read the hearing notice and register a telephone number where the party can be reached for the hearing. The second simple and obvious mandate is to be available at the number provided at the date and time of the hearing. Further, if the party misses or does not receive the hearing call, the party has telephone numbers on the hearing notice at which to inquire. Due process requires notice and an opportunity to be heard, both of which were provided to the parties. *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.* As a courtesy, claimant was granted additional time not required by statute or rule.

For the reasons that follow, the administrative law judge concludes that inasmuch as the decision was not vacated as a result of the Employment Appeal Board remand, the administrative law judge's reasoning and conclusions of law in appeal number 17A-UI-03840-S1-T is hereby adopted and incorporated herein as the findings of fact for appeal number 17R-UI-05691-JP-T.

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. The appellant also has the option to appeal the decision directly to the Employment Appeal Board, whose address is listed at the top right caption.

**DECISION:**

The April 4, 2017, (reference 05) decision is modified in favor of the employer/appellant. Inasmuch as the decision was not vacated as a result of the Employment Appeal Board remand, the administrative law judge's decision in appeal number 17A-UI-03840-S1-T is hereby adopted and incorporated herein as the findings of fact for appeal number 17R-UI-05691-JP-T.

The administrative law judge's decision for appeal number 17A-UI-03840-S1-T denying benefits remains in effect. Because claimant voluntarily left work without good cause attributable to the employer, benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefits amount, provided she is otherwise eligible. There is no overpayment because benefits have not been paid on this claim. The employer did participate in the fact-finding interview and its account shall not be charged.

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Jeremy Peterson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

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Decision Dated and Mailed

jp/rvs