

IOWA DEPARTMENT OF INSPECTIONS AND
APPEALS
Division of Administrative Hearings
Wallace State Office Building
Des Moines, Iowa 50319

Appeal Number: 17IWDUI255
OC: 5/22/16
Claimant: Appellant (6)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed Notice of Appeal, directly to the **Employment Appeal Board, 4TH Floor Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

DECISION OF THE ADMINISTRATIVE LAW JUDGE

LAURIE J. HAACK
1504 E AVENUE NW APT 7A
CEDAR RAPIDS IA 52405

STATE CLEARLY

IOWA WORKFORCE DEVELOPMENT
INVESTIGATION & RECOVERY
KENDRA MILLS

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to the department. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

JONI BENSON, IWD
NICHOLAS OLIVENCIA, IWD
EMILY CHAFA, UI APPEALS MANAGER
JODI DOUGLAS, IWD

(Administrative Law Judge)

June 9, 2017

(Decision Dated & Mailed)

Iowa Code § 17A.12(3) – Default Decision
871 Iowa Administrative Code 26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

Laurie J. Haack filed an appeal from a March 13, 2017 unemployment insurance decision by Iowa Workforce Development (IWD) (reference 05), which concluded that Ms. Haack had been overpaid a net of \$3748.00 on her unemployment insurance claim between September 4, 2016 and February 18, 2017. A 15% penalty was added by IWD due to misrepresentation. The issues certified for appeal were: (1) whether IWD correctly determined that the Laurie J. Haack was overpaid unemployment insurance benefits and, if so, whether the overpayment was correctly calculated; and (2) whether IWD correctly determined that the overpayment was the result of misrepresentation. The Notice of Telephone Hearing was mailed to the parties' last known addresses of

record on May 24, 2017 and scheduled the hearing for June 8, 2017 at 9:30 a.m. before Administrative Law Judge (ALJ) Margaret LaMarche. The notice clearly instructed the parties to call in to toll-free hearing number at the time scheduled for the hearing. The notice stated that the ALJ would wait five minutes after the time the hearing was scheduled to begin to allow all parties to call in. The notice also stated that if a party did not call in within that time, then the party would not be able to participate in the hearing.

On June 2, 2017 at 4:35 p.m., Ms. Haack emailed the undersigned ALJ to ask if the hearing could be rescheduled for June 7, 2017 because she had to work on June 8, 2017. On June 5, 2017 at 8:15 a.m., the ALJ forwarded this request to the IWD's representative, Kendra Mills, and asked Mills if she had any objection to the request and whether she would be available to participate in the hearing during the morning of June 7, 2017. Ms. Haack was copied on this email. Ms. Mills responded that she could be available at 8 or 11 a.m. on June 7th. On June 5, 2017 at 9:10 a.m. the ALJ sent an email to Laurie Haack, with a copy to Ms. Mills, and asked Ms. Haack if she was available for hearing at either 8:00 a.m. or 11:00 a.m. on June 7th. Ms. Haack did not respond, and a follow up email was sent to Ms. Haack at 1:23 p.m. on June 5th. Once again, Ms. Haack did not respond. On June 6, 2017 at 8:02 a.m., the ALJ sent a final email to Laurie Haack and informed her that if she did not respond and confirm her availability for hearing on June 7th, then the hearing would proceed as scheduled in the Notice of Telephone Hearing. Once again, Ms. Haack did not respond.

On June 8, 2017 at 9:30 a.m., ALJ Margaret LaMarche and IWD Representative Kendra Mills called in for the telephone hearing and waited for 10 minutes. By 9:40 a.m., Laurie Haack still had not called in for the hearing. Ms. Haack had not contacted the ALJ or Kendra Mills in response to the prior days' emails. Based upon Ms. Haack's failure to participate in the hearing and the applicable law, the ALJ enters the following findings of fact, reasoning and conclusions of law and decision.

ISSUE:

Should the appeal be dismissed based upon the appellant not participating in the hearing?

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. Appellant Laurie J. Haack clearly received the Notice of Telephone Hearing because she responded to it by inquiring about the possibility of rescheduling the hearing to June 7, 2017. Although Ms. Haack sent an email on June 2, 2017 to ask if the hearing could be rescheduled, she never responded to any of the ALJ's emails attempting to facilitate a rescheduling of the hearing to June 7, 2017 to accommodate her work schedule. A final email was sent to Ms. Haack informing her that the hearing would proceed as scheduled on June 8, 2017 at 9:30 a.m. unless she responded. Ms. Haack did not respond to the email and she did not call in to the hearing phone number at the time scheduled in the Notice of Telephone Hearing.

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 871 Iowa Administrative Code 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.

Laurie J. Haack appealed the unemployment decision but failed to participate in the hearing although she has been given ample opportunity to do so. She has therefore defaulted on her appeal pursuant to Iowa Code §17A.12(3) and 871 Iowa Administrative Code 26.14(7), and her appeal is dismissed. The appealed decision shall remain in force and effect.

If Appellant Laurie J. Haack disagrees with this decision, she may ask to have the hearing reopened, as provided by 871 Iowa Administrative Code 26.14(6) and 26.8(3). To do so, Ms. Haack must file a written request to reopen the hearing 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 beginning of this decision and must explain the emergency or other good cause that prevented her from participating in the hearing at its scheduled time.

DECISION

The unemployment insurance decision (reference 05) dated March 13, 2017, is AFFIRMED and remains in effect. The appeal is DISMISSED. Iowa Workforce Development shall take any action necessary to implement this decision.

mlm