

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KEITH L BURMEISTER
Claimant

APPEAL NO. 16A-UI-13694-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRIDGESTONE BANDAG LLC
Employer

**OC: 11/27/16
Claimant: Appellant (6)**

Iowa Code § 17A.12(3) - Default Decision
871 IAC 26.14(7) - Dismissal of Appeal on Default
871 IAC 26.14(7) - Late Call
Iowa Code § 17A.12-3 - Non-Appearance of Party

STATEMENT OF THE CASE:

An appeal was filed from a representative's unemployment insurance decision dated December 12, 2016, (reference 01), that concluded Keith Burmeister (claimant/appellant) was not eligible for unemployment insurance benefits after a separation from employment from Bridgestone Bandag (employer/respondent). Notices of hearing were mailed to the parties' last-known addresses of record for a telephone hearing to be held at 10:00 a.m. on January 18, 2017. A review of the Appeals Bureau's conference call system indicates that the claimant/appellant failed to respond to the hearing notice to provide a telephone number at which he could be reached for the hearing so no hearing was held.

ISSUE:

The issue is whether the underlying decision should be affirmed and the appeal should be effectively dismissed based upon the claimant/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 January 03, 2017. There is no evidence suggesting the claimant/appellant did not receive the hearing notice prior to the hearing scheduled on January 18, 2017.

The front page of the hearing notices states: "**You must register for the hearing immediately!** You must register your phone number and name(s) and phone number(s) 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 hearing notice instructions further advise the parties, "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)."

The claimant/appellant received the hearing notice prior to the hearing scheduled on January 18, 2017. The instructions inform the parties that if the party does not contact the Appeals Section and provide the phone number at which the party can be contacted for the

hearing, the party will not be called for the hearing. The claimant/appellant failed to contact the Appeals Bureau to provide a telephone number at which he could be reached for the hearing so no hearing was held. The first time the claimant/appellant directly contacted the Appeals Bureau was on January 18, 2017, sixty- minutes after the scheduled start time for the hearing.

The representative's decision concluded that the claimant/appellant was not 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. 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.

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).

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 rule further states that failure to read or follow the instructions on the notice of hearing is not good cause for reopening the record. 871 IAC 26.14(7)c.

The statute does not allow the record to be reopened without good cause. This claimant/appellant has not provided good cause for reopening the record. The statute prohibits this administrative law judge from reopening the record without good cause. The record shall not be reopened.

Consequently, the claimant/appellant has therefore defaulted on his 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 December 12, 2016, (reference 01), is affirmed. The decision denying benefits remains in effect.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs