

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VICTOR V CASIAS

Claimant

APPEAL NO: 20A-UI-00545-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEN HARTOG INDUSTRIES INC

Employer

OC: 12/15/19

Claimant: Appellant (6)

Iowa Code § 96.5(2)(a) – Discharge for Misconduct

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

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

STATEMENT OF THE CASE:

Victor Casias filed a timely appeal from the January 15, 2020, reference 01, decision that disqualified him for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that Mr. Casias was discharged on December 19, 2019 for excessive unexcused absences after being warned. A notice of hearing was mailed to the parties' last-known addresses of record for a telephone hearing to be held at 9:00 a.m. on February 5, 2020. The employer registered a telephone number for the hearing and was available through Chris Carda. A review of the Appeals Bureau's conference call system indicates that the claimant/appellant, Mr. Casias, failed to respond to the hearing notice instructions to register a telephone number at which he could be reached for the hearing. 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:

Claimant Victor Casias is the appellant in this matter. Mr. Casias was properly notified of the appeal hearing set for 9:00 a.m. on February 5, 2020 through the hearing notice that was mailed to his last-known address of record on January 24, 2020. Mr. Casias did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Mr. Casias did not comply with the hearing notice instructions to register a telephone number at which he could be reached for the hearing. Mr. Casias did not provide a telephone number in his electronic appeal. Mr. Casias has not provided the Appeals Bureau with a telephone number since filing the appeal.

On Saturday, February 1, 2020 at 8:36 a.m., Mr. Casias sent the following email message to the Appeals Bureau:

My name is Victor casias my social is ... my appeal number is 20a-00545-jt-t my hearing date and time is February 5th at 9:00 am. I will not be able to participate due to my job that is why I'm leaving this email. I was employed with denhartog industries for one year and 9 months and during that time I received alot of mistreatment and harassment from my supervisors I was also was injured on the job and the company wasn't very understanding also the temperature there went from very hot to cold and I was constantly getting sick and going to the doctor I also had a personal issue I had to deal with and let the company know 2 months beforehand and never got a clear answer and when I brought up the situation again my supervisor told me he would talk to upper management and let me know and never did then finally I sent the hr manager an email and when I had dealt with my personal situation I had an email from the hr manager saying that they could not help me in this situation and they could no longer continue employment with me. Also due to being sick any work I may have missed I always presented a doctors note and I can get copies if needed. Thank you for your time

Upon review of the administrative file, the administrative law judge noted that Mr. Casias had presented a somewhat similar email message the Benefits Bureau on January 6, 2020 as his reason why he could not participate in the January 14, 2020 fact-finding interview. In that message, Mr. Casias wrote:

My name is Victor casias my social is ... I will be unavailable at the time of the fact finding interview due to getting a new job that I start on January 6th and am writing this to explain my side. I had to turn my self [sic] in to the Sioux county jail on December 19th and do a little over 6 days in jail and I had notified denhartog industries two months before I had to turn myself in and when I got out of jail I had an email from denhartog industries saying that they couldn't help me out in this situation and that I was terminated.

To who ever [sic] is reading this thank you for your time

The administrative law judge notes the change in Mr. Casias's theory of the case between the January 6 email message and the February 1 email message.

On Monday, February 3, 2020, the Appeals Bureau support staff forwarded Mr. Casias' weekend email to the undersigned administrative law judge. At 2:31 p.m. on February 3, 2020, the undersigned administrative law judge sent an email message to Mr. Casias at the email address Mr. Casias had used to send his message on February 1, 2020. The administrative law judge sent a courtesy copy of his message to the employer at the employer's email address of record. The administrative law judge wrote:

Mr. Casias,

I have received your email of 2/1/2020. I had our staff forward a copy to the employer. The unsworn written statement contained in your email message is not an acceptable substitute for your sworn testimony at an appeal hearing. You have not provided the Appeals Bureau with a telephone number where you may be reached to discuss whether there is good cause to reschedule the appeal hearing. Please contact the Appeals Bureau immediately to provide a telephone number where you may be reached. The toll-free number for the Appeals Bureau is 1-800-532-1483. At this time, the appeal hearing remains set to go forward as scheduled on 2/5/2020 at 9:00 a.m.

James E. Timberland
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development

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Mr. Casias did not respond to the administrative law judge's message inviting him to engage in discussion regarding his purported unavailability for the appeal hearing he requested through his January 19, 2020 appeal.

The January 15, 2020, reference 01, decision disqualified Mr. Casias for benefits and held the employer's account would not be charged for benefits, based on the deputy's conclusion that Mr. Casias was discharged on December 19, 2019 for excessive unexcused absences after being warned. The deputy's fact-finding notes indicate a separation triggered by a several-day incarceration.

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.

Iowa Administrative Code rule 871-26.14(7) provides:

(7) 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 provide in Iowa Code section 17A.12(3). The record may be reopened if the absent party makes a request to reopen the hearing in writing 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.

Iowa Administrative Code rule 871-26.8(4) provides:

(4) A request to reopen a record or vacate a decision must be made in writing. If necessary, the presiding officer may hear, ex parte, additional information regarding the request for reopening. The granting or denial of such a request may be used as grounds for appeal to the employment appeal board of the department of inspections and appeals upon the issuance of the presiding officer's final decision in the case.

The claimant/appellant appealed the representative's decision but failed to participate in the hearing. The claimant/appellant has therefore defaulted on his appeal pursuant to Iowa Code §17A.12(3) and Iowa Admin. Code r. 871-24.14(7), and the representative's decision remains in force and effect.

The administrative law judge notes that the claimant appears to be actively avoiding meaningful participation in the claim adjudication process.

If the claimant/appellant disagrees with this decision, pursuant to the rule, the claimant/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 good cause that prevented the claimant/appellant from participating in the hearing at its scheduled time.

DECISION:

The claimant defaulted on his appeal. The appeal is dismissed. The January 15, 2020, reference 01, decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the December 19, 2019 separation, remains in effect.

James E. Timberland
Administrative Law Judge
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Iowa Workforce Development
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Decision Dated and Mailed

jet/rvs