

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA A LONDRIE
Claimant

APPEAL NO: 16A-UI-08023-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 06/26/16
Claimant: Appellant (6)

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

STATEMENT OF THE CASE:

Melissa Londrie filed an appeal from the July 14, 2016, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on an agency conclusion that Ms. Londrie had voluntarily quit on June 24, 2016 without good cause attributable to the employer. A notice of hearing was mailed to the parties' last-known addresses of record for a telephone hearing to be held at 10:00 a.m. on August 22, 2016. The employer was available through James Tranfaglia of Corporate Cost Control and Hy-Vee witnesses Tracy Roth, Joni McKay and John Preston. Ms. Londrie was not available at the telephone number provided for the hearing and did not participate in 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 Melissa Londrie is the appellant in this matter. The hearing in this matter was initially set for August 10, 2016. The parties were properly notified of that hearing through notice that was mailed to their addresses of record on July 27, 2016. On August 5, 2016, the employer representative, Corporate Cost Control, submitted proposed exhibits for the August 10 hearing and mailed a copy of the proposed exhibits to Ms. Londrie. On August 8, 2016, Ms. Londrie provided a telephone number where she could be reached for the August 10 hearing. On August 10, Ms. Londrie and the employer appeared for the scheduled appeal hearing. However, Ms. Londrie reported that she had been out of town and had not been home to receive the exhibits. Ms. Londrie confirmed her address of record. The employer representative provided proof that the exhibits had been delivered to Ms. Londrie's address of record. The employer had submitted 19 proposed exhibits. Because Ms. Londrie did not have the exhibits and lacked immediate means to receive or retrieve the exhibits, the administrative law judge found good cause to postpone the hearing. Before adjourning the August 10

proceeding, the administrative law judge and the employer representative marked the employer's proposed exhibits. Before adjourning the hearing, the administrative law judge instructed Ms. Londrie to contact the administrative law judge later that same day to confirm receipt of the employer's exhibits and to get her copies of the exhibits marked with the correct exhibit number. Though Ms. Londrie agreed to make the requested contact, she did not in fact contact the Appeals Bureau or the administrative law judge later on August 10 and has not made any contact since. When Ms. Londrie did not make the requested contact on August 10, the Appeals Bureau mailed to Ms. Londrie marked copies of the employer's proposed exhibits on August 11, 2016. The cover sheet for the exhibits contained the date and time of the rescheduled hearing.

On August 11, 2016, the parties were properly notified of the rescheduled hearing set for 10:00 a.m. on August 22, 2016 through notice mailed to their addresses of record. Ms. Londrie did not respond to that notice. On August 22, 2016, at the time set for the rescheduled hearing, the administrative law judge made two attempts to reach Ms. Londrie at the number she had provided on August 8 for the August 10 hearing. Ms. Londrie did not answer on either attempt. On each attempt, an automated message eventually stated that the voice mail box had not been set up for the number. The employer was available for the hearing through James Tranfaglia of Corporate Cost Control and Hy-Vee personnel Tracy Roth, Joni McKay, and John Preston. At 10:16 a.m., the administrative law judge closed the hearing record and dismissed the employer representative and employer witnesses. As of the entry of this decision at 10:45 a.m. on August 22, 2016, Ms. Londrie has not made contact with the Appeals Bureau to indicate she is available for the hearing or to inquire about the rescheduled hearing she missed at 10:00 a.m. Ms. Londrie did not request a postponement of the rescheduled hearing as required by the hearing notice.

The July 14, 2016, reference 01, decision disqualified Ms. Londrie for benefits and relieved the employer's account of liability for benefits, based on an agency conclusion that Ms. Londrie had voluntarily quit on June 24, 2016 without good cause attributable to the employer.

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 has 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 force and effect.

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 emergency or other good cause that prevented the claimant/appellant from participating in the hearing at its scheduled time.

DECISION:

The July 14, 2016, reference 01, decision is affirmed. The decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on a June 24, 2016 separation, remains in effect.

James E. Timberland
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

Decision Dated and Mailed

jet/pjs