

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ELIZABETH THURMAN

Claimant

APPEAL NO. 14A-UI-10604-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENERAL NOVELTY LTD

Employer

OC: 04/20/14

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)b - 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 September 29, 2014, (reference 03), that concluded Elizabeth Thurman (claimant/appellant) was not eligible for unemployment insurance benefits for the one-week period ending May 3, 2014, due to the receipt of vacation pay from General Novelty, Ltd. (employer/respondent). Notices of hearing were mailed to the parties' last-known addresses of record for a telephone hearing to be held at 2:00 p.m. on November 3, 2014. The claimant/appellant did not participate in the scheduled hearing so no hearing was held.

ISSUE:

The issue is whether good cause has been established to reopen the record, and if not, 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. The claimant/appellant received the hearing notice prior to the hearing scheduled on November 3, 2014. The claimant/appellant provided her telephone number but was not available when called at that number and no hearing was held. The hearing notice instructions specifically advise parties, "If you do not participate in the hearing because you do not register for the hearing, register late, or cannot be reached at the number you provided when the judge calls for the hearing, the appeal may be dismissed or decided based on other available evidence." The claimant/appellant called the Appeals Bureau at 4:15 p.m. and said that her phone did not ring at the scheduled hearing time. Both the Appeals Clerk and the Administrative Law Judge called the claimant and the number did not go through.

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. Likewise, 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).

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. It can be assumed an appellant intends to participate in the hearing simply by the fact an appeal is filed, but their responsibility does not end there and all parties are required to follow the specific written instructions printed on the hearing notice. Due process requires notice and an opportunity to be heard, both of which were provided to the parties.

If the claimant/appellant responds to the notice of hearing after the record has been closed, the administrative law judge shall not take the evidence of the late party. Instead, the administrative law judge shall inquire ex parte as to why the party was late in responding to the notice of hearing. For good cause shown, the record shall be reopened and cause further notice of hearing to be issued. The record shall not be reopened without a finding of good cause for the party's late response to the notice of hearing. 871 IAC 26.14(7)b. Furthermore, the rule states that failure to read or follow the hearing notice instructions shall not constitute good cause. 871 IAC 26.14(7)c.

In the case herein, the claimant/appellant has failed to establish the requisite good cause required to reopen the hearing record. Consequently, the claimant/appellant has therefore defaulted on her 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 September 29, 2014, (reference 03), is affirmed. The decision denying benefits for the one-week period ending May 3, 2014, remains in effect.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs