

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TISO M MATTHEWS
Claimant

APPEAL 18A-UI-03770-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARTERS LEASING INC
Employer

**OC: 02/25/18
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:

Tiso M. Matthews, the claimant/appellant, filed a representative's unemployment insurance decision dated March 16, 2018, reference 01, that concluded the claimant/ appellant was not eligible for unemployment insurance benefits after a separation from employment from Carters Leasing, Inc. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled at 1:00 p.m. on April 19, 2018. The claimant/appellant responded to the hearing notice by registering a telephone number at which he could be reached for the hearing. Mr. Matthew's was called at the telephone number that he provided. The claimant initially participated in the telephone hearing, but the claimant disconnected during the employer's testimony. Although the administrative law judge made repeated attempts to reconnect Mr. Matthews to the telephone hearing and left messages, the claimant did not rejoin the telephone hearing. The administrative law judge concluded that the claimant's telephone continued to be operable because it accepted voice messages. When the administrative law judge determined that Mr. Matthews had dropped off the call, no further testimony was taken. The administrative law judge attempted to call the claimant again at the telephone number provided. The claimant's telephone accepted messages instructing the claimant to contact the Appeals Bureau to rejoin the hearing. Mr. Matthews did not contact the Appeals Bureau again. During a final attempt to contact Mr. Matthews, it appears that the claimant's telephone was picked up before being quickly disconnected. The claimant did not contact the Appeals Bureau to rejoin the telephone hearing, although he had been instructed by a voice recording to do so. Mr. Matthews continued to be unavailable at the telephone number that he had provided for the hearing and did not participate in the hearing.

ISSUE:

Whether the underlying decision should be affirmed and the appeal should be dismissed based upon the claimant/appellants failure to participate in the hearing.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing for this appeal. The claimant/appellant failed to remain available at the telephone number provided for the hearing and did not participate in the hearing. The representative's decision concluded that the claimant/appellant was not eligible for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

The claimant/appellant appealed the unemployment insurance decision but failed to participate in the scheduled appeal hearing. The claimant failed to follow through on his appeal hearing.

The Iowa Administrative Procedure 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.**

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 §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.
- c. **Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.** (Emphasis added.)

A default should not be set aside for ordinary negligence or want of ordinary care. Defaults should not be set aside where the movant ignores plain instruction with ample opportunity to comply. See *Houlihan v. Emp't Appeal Bd.*, 545 N.W.2d 863 (Iowa 1996). Here, the claimant

was clearly directed to read the hearing notice and register a telephone number where he or she can be reached for the hearing. Due process requires notice and an opportunity to be heard, both of which were provided to each party. *The rule does not provide exceptions for good intentions and/or a party contacting the Appeals Bureau within a 'reasonable' or certain amount of time after the hearing is scheduled.* It is assumed an appellant intends to participate in the hearing simply by the fact that an appeal is filed, but his or her responsibility does not end there.

Each party is required to follow the prominent specific written instructions printed on the hearing notice. The claimant filed the appeal and is held solely responsible for going forward with the case in a prompt and deliberate manner. The rule holds an appellant in default if he or she is not present *at the start* of hearing. As a courtesy, this appellant was granted an additional grace period not required by statute or rule. Here, notwithstanding notice, opportunity and additional time, he failed to prosecute the case at the appointed date and time without providing a good-cause reason for the delay or failure to do so. Accordingly, the appellant is in default and the appeal shall be dismissed. Iowa Code § 17A.12(3); Iowa Admin. Code r. 26.14(7); and Iowa Admin. Code r. 871-26.8(3). The unemployment insurance decision remains in force and effect.

If the appellant does not intend to pursue this appeal, he need not take any action. If he intends to pursue this appeal, he may appeal the decision directly to the Employment Appeal Board at the address listed on the front page of this decision. Or, he may make a written request to the administrative law judge that the hearing be reopened. The written request should be mailed to the administrative law judge at the address listed on the front page of this decision and must explain the emergency or other good cause that prevented him from participating in the hearing at its scheduled time. If he intends to pursue this appeal, he must take one of these actions within 15 days after the mailing date of this decision.

DECISION:

The unemployment insurance decision dated March 16, 2018, reference 01, is affirmed. The decision denying benefits remains in effect as the appellant is in default. The appeal is dismissed.

Terence Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn