

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN M VALDEZ
Claimant

APPEAL NO: 17A-UI-00675-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC
Employer

OC: 12/11/16
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:

John Valdez filed an appeal from the January 10, 2017, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Mr. Valdez had voluntarily quit the employment on December 18, 2016 without good cause attributable to the employer by failing to contact the employer within three working days of completing his work assignment. A notice of hearing was mailed to the parties' last-known addresses of record for a telephone hearing to be held at 2:00 p.m. on February 9, 2017. The employer was available through Colleen McGuinty and LaKendra Miller. Spanish-English interpreter Roger Contin of CTS Language Link was available to assist with the hearing. At the time of the hearing, Mr. Valdez was not available at the telephone number he registered for the hearing and did not participate in the hearing. Based upon Mr. Valdez'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 John Valdez is the appellant in this matter. The appeal hearing was set for February 9, 2017 at 2:00 p.m. On January 26, 2017, the Appeals Bureau mailed a hearing notice to Mr. Valdez at his last-known address of record to alert him to the hearing date and time. On February 2, 2017, Mr. Valdez registered a telephone number for the hearing. On that same day, Mr. Valdez submitted a written request to reschedule the hearing. The request was in Spanish. The administrative law judge promptly had request translated. The request indicated that Mr. Valdez had another appointment that conflicted with the hearing date and time, but did not provide any further information regarding the nature of the appointment or why that appointment should take precedence. On February 2, the administrative law judge called Mr. Valdez in an attempt to obtain additional information concerning the postponement request. The administrative law had a Spanish-English interpreter assist with the call. When Mr. Valdez

did not answer, the administrative law judge left a voice mail message for Mr. Valdez in English and in Spanish. The administrative law judge stated in the message that the requested to postpone the hearing was denied because insufficient information had been provided to establish good cause to postpone the hearing. The administrative law judge invited Mr. Valdez to submit addition information to supplement and review his reschedule request. The administrative law judge did not hear further from Mr. Valdez. At the time of the hearing on February 9, 2017, the administrative secured an interpreter, connected the employer participants to the call, and then made two attempts to reach Mr. Valdez for the hearing. Mr. Valdez did not answer. The administrative law judge left a message for Mr. Valdez in English and Spanish in connection with each call, but did not hear from Mr. Valdez. At 2:17 p.m., the administrative law judge closed the record and excused the employer. As of the entry of this decision, the administrative law judge has not heard from Mr. Valdez. Mr. Valdez did not participate in the hearing and did not provide good cause to reschedule the hearing.

The January 10, 2017, reference 01, decision disqualified Mr. Valdez for benefits and relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Mr. Valdez had voluntarily quit the employment on December 18, 2016 without good cause attributable to the employer by failing to contact the employer within three working days of completing his work assignment.

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 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.

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 January 10, 2017, 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 the December 18, 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/rvs