

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TAMMY M ENDRES
Claimant

HEALTHCARE SERVICES GROUP INC
Employer

APPEAL 15A-UI-04921-DL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/08/15
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:

Claimant/appellant filed an appeal from the April 16, 2015 (reference 01) unemployment insurance decision that concluded claimant was ineligible for unemployment insurance benefits after a separation from employment. Notices of hearing were mailed to the parties' last-known addresses of record, for a telephone hearing scheduled for May 18, 2015. A review of the Appeals Bureau's conference call system indicates that the appellant opted not to participate but did not specifically withdraw the appeal. No hearing was held.

ISSUE:

Should the appeal be dismissed based on the appellant's failure to appear and participate?

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing for this appeal. The appellant opted not to participate but did not specifically withdraw the appeal. No hearing was held. The unemployment insurance decision had concluded that the claimant was ineligible for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

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.** (Emphasis added.)

Agency rules at Iowa Admin. Code r. 26.14(7) provides:

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. 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.** (Emphasis added.)

Due process requires notice and an opportunity to be heard, both of which were provided to each party. It is assumed an appellant intends to participate in the hearing simply by the fact that an appeal is filed, but the appellant's responsibility does not end there. Each party is required to follow the prominent specific written instructions printed on the hearing notice. The appellant filed the appeal and is held solely responsible for going forward with the case in a prompt and deliberate manner. Here, the claimant opted not to participate but did not withdraw the appeal. Accordingly the appellant is in default and the appeal shall be dismissed. Iowa Code § 17A.12(3) and Iowa Admin. Code r. 24.14(7). The unemployment insurance decision remains in full force and effect.

DECISION:

The April 16, 2015 (reference 01) unemployment insurance decision denying benefits remains in effect, as the appellant is in default.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

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