IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

ROMMY M NDEKE Claimant **TYSON FRESH MEATS INC** Employer	**APPEAL NO. 16A-UI-05564-S1-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 04/24/16** **Claimant: Appellant (6)**

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

STATEMENT OF THE CASE:

An appeal was filed from a representative's unemployment insurance decision dated May 12, 2016 (reference 01) that concluded Rommy Ndeke (claimant/appellant) was not eligible for unemployment insurance benefits after a separation from employment from Tyson Fresh Meats (employer/respondent). Notices of hearing were mailed to the parties' last-known addresses of record, for a telephone hearing to be held at 10:00 a.m. on June 3, 2016. A review of the Appeals Bureau's conference call system indicates that the claimant/appellant failed to respond to the hearing notice to provide a telephone number at which the claimant/appellant could be reached for the hearing so no hearing was held.

ISSUE:

The issue is 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. A Notice of Appeal and Hearing was mailed to both parties on May 18, 2016. There is no evidence suggesting the employer/appellant did not receive the hearing notice prior to the hearing scheduled on June 3, 2016.

The front page of the hearing notices states: "**The judge will not call you on the day of the hearing if you have not registered your phone number with the Appeals Bureau in Des Moines, Iowa as instructed below.**" This information can be found on both the front and the back of the hearing notice. The hearing notice instructions further advise the 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 failed to provide a telephone number at which it could be reached for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

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. The statute further states that if a party makes a timely request to vacate the decision and shows good cause for failing to appear, the judge shall vacate the decision and conduct another hearing.

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). The record may be reopened if the absent party makes a request to reopen the hearing and shows good cause for reopening the hearing. The rule further states that failure to read or follow the instructions on the notice of hearing is not good cause for reopening the record. 871 IAC 26.14(7)c.

The claimant/appellant appealed the unemployment insurance decision but failed to participate in the scheduled appeal hearing. The claimant/appellant has, therefore, defaulted on the claimant/appellant's appeal pursuant to Iowa Code § 17A.12(3) and 871 IAC 26.14(7), and the representative's decision remains in full force and effect.

If the appellant disagrees with this decision, a written request to reopen the record must be made to the administrative law judge 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 appellant from participating in the hearing at the scheduled time. The appellant also has the option to appeal the decision directly to the Employment Appeal Board, whose address is listed at the beginning of the decision.

DECISION:

The representative's unemployment insurance decision dated May 12, 2016 (reference 01) is affirmed. The decision denying benefits remains in effect.

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

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Decision Dated and Mailed

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