IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

NIKOLE K BRINNING Claimant **ACCESSIBLE MEDICAL STAFFING** Employer	**APPEAL NO: 21A-UI-17107-JT-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 04/18/21** **Claimant: Appellant (6)**

Iowa Code § 96.4(3) – Able & Available
Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

The claimant, Nikole Brinning, filed an appeal from the August 13, 2021, reference 01, decision that denied benefits effective April 18, 2021, based on the deputy's conclusion that the claimant was not partially unemployed from Accessible Medical Staffing within the meaning of the law. A notice of hearing was mailed to the parties' last-known addresses of record for a telephone hearing to be held at 10:05 a.m. on September 29, 2021. The hearing in this matter was consolidated with the hearing in Appeal Number 21A-UI-17106-JT-T. The employer registered a telephone number for the hearing and was available through Lisa Smith. A review of the Appeals Bureau's conference call system indicates that the claimant/appellant failed to respond to the hearing notice instructions to register a telephone number at which the claimant could be reached for the hearing. Based upon the claimant/appellant'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:

The claimant is the appellant in this matter and in a companion appeal. On September 13, 2021, Iowa Workforce Development Unemployment Insurance Appeals Bureau mailed a notice of hearing to the claimant's last-known address of record regarding the appeal hearing set for 10:05 a.m. on September 29, 2021. On September 17, 2021, the United States Postal Service returned the hearing notice with a note that stated:

RETURN TO SENDER
ATTEMPTED – NOT KNOWN
UNABLE TO FORWARD

The Appeals Bureau received the hearing notice on September 20, 2021 and promptly emailed the hearing notice to the claimant at her last-known email address of record. The Appeals Bureau has not heard from the claimant The claimant did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. The claimant did not comply with the hearing notice instructions to register a telephone number at which the claimant could be reached for the hearing. The claimant did not provide a telephone number in the claimant's appeal. The claimant has not otherwise provided the Appeals Bureau with a telephone number since filing the appeal.

The August 13, 2021, reference 01, decision denied benefits effective April 18, 2021, based on the deputy's conclusion that the claimant was not partially unemployed from Accessible Medical Staffing within the meaning of the law.

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.

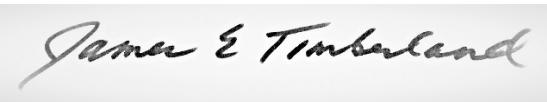
Iowa Administrative Code rule 871-26.14(7) provides:

> (7) 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 provide in Iowa Code section 17A.12(3). The record may be reopened if the absent party makes a request to reopen the hearing in writing 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.

The claimant/appellant appealed the representative's decision but failed to participate in the hearing. The claimant/appellant has therefore defaulted on the 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.

DECISION:

The claimant defaulted on the appeal. The appeal is dismissed. The August 13, 2021, reference 01, decision that denied benefits effective April 18, 2021, based on the deputy's conclusion that the claimant was not partially unemployed from Accessible Medical Staffing within the meaning of the law, remains in effect.



James E. Timberland
Administrative Law Judge
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September 30, 2021
Decision Dated and Mailed

jet/kmj