

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

COREY A SCOTT
Claimant

PIPE PRO INC
Employer

APPEAL NO. 19A-UI-04361-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/16/18
Claimant: Respondent (6)

Iowa Code § 96.4(3) – Able and Available
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 21, 2019, (reference 08), that concluded claimant/respondent was not eligible for unemployment insurance benefits beginning May 12, 2019 finding that the claimant appeared to be still employed but on a short-term layoff, concluding that the claimant was able and available for work during the layoff. Notices of hearing were mailed to the parties' last-known addresses of record for a telephone hearing to be held at 1:00 p.m. on June 21, 2019. A review of the Appeals Bureau's conference call system indicates that the employer/appellant failed to respond to the hearing notice to provide a telephone number at which the employer 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/respondent's failure to participate in the hearing.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing for this appeal. The appellant employer did not provide a name and telephone number to participate in the scheduled hearing. Because the appellant was not available to participate, no hearing was held. Official notice of the Clear2there hearing screen and the hearing recording is taken to establish that the employer appellant did not register a telephone number to participate in the hearing.

The hearing notice instruction specifically advises parties, in English and Spanish:

Date: FRIDAY JUNE 21, 2019
Iowa Time: 1:00 PM

IMPORTANT NOTICE!

**YOU MUST PROVIDE YOUR PHONE NUMBER TO THE APPEALS BUREAU
AS SOON AS POSSIBLE. If you do not follow these instructions, the judge will**

not call you for the hearing. You must also provide the name(s) and phone numbers of any witnesses to the Appeals Bureau.

The back page of the hearing notice provides further instruction and warning:

Failure to Participate or Register for Appeal Hearing

If you do not participate in the hearing, the judge may dismiss the appeal or issue a decision without considering your evidence. The Appeals Bureau does not have a phone number for this hearing unless you provide it to us by following the instructions on the other side of this page. If you do not follow these instructions, the judge will not call you for the hearing. 871 IAC 26.14(7)

The unemployment insurance decision had concluded that the claimant was entitled to 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.**

Agency rules at Iowa Admin. Code r. 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.)

The Iowa Supreme Court stated that 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 clear directive is to read the hearing notice and register a telephone number where the party can be reached for the hearing. This appellant did not do so.

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 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 employer 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 not present *at the start* of hearing. As a courtesy, the appellant was granted an additional 30-minute grace period not required by statute or rule. Here, notwithstanding notice, opportunity and additional time, the appellant failed to pursue its appeal 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) and Iowa Admin. Code r. 26.14(7). The unemployment insurance decision remains in force and effect.

If the appellant does not want to pursue this appeal, it need not take any further action. If the appellant/employer wishes to do so, it must comply with the following deadlines. The appellant may appeal the decision directly to the Employment Appeal Board at the address listed in the caption appeal rights information on the front page of this decision within 15 days after the mailing date of this decision. Or, the appellant employer may 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 must explain the emergency or other good cause that prevented the appellant from participating in the hearing at its scheduled time.

DECISION:

The unemployment insurance decision issued on May 21, 2019, reference 08, allowing benefits remains in effect as the appellant employer is in default. The appeal is dismissed.

Terence P.Nice
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed

tn/scn