IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

ROSA I CAVAZOS Claimant **TYSON FRESH MEATS INC** Employer	**APPEAL 18A-UI-07612-TN-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 06/17/18** **Claimant: Appellant (6)**

Iowa Code §96.5(2)(a) – Discharge for Misconduct
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/appellant, Rosa Cavazos, filed an appeal from the unemployment insurance decision dated July 5, 2018, reference 01, which concluded she was not eligible for unemployment insurance benefits. Notices of hearing were mailed on July 19, 2018 to the parties' last known addresses of record for a telephone hearing scheduled on August 1, 2018 at 3:00 p.m. The notice of hearing, which includes instructions in English and Spanish, was not returned as undeliverable. The claimant/appellant did not follow the instructions on the Notice of Hearing to register a telephone number where she could be reached at the time scheduled for this hearing. The employer had registered for the hearing and was present and prepared to proceed with the telephone hearing. Because the claimant/appellant had not registered her telephone number as instructed, 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 did not register a telephone number where she could be reached for this hearing. She did not follow the instructions on the Notice of Appeal and Hearing. Official notice of the Clear2There hearing control screen is taken to establish that the claimant/appellant did not register a telephone number for the hearing before the time set for the hearing. No hearing was held.

The hearing notice instruction specifically advises parties:

Date: WED AUG 01, 2018
Iowa Time: 3:00 PM

You must register for the hearing immediately!

> You must register your phone number and the name(s) and phone number(s) of any witness(es) with the appeal bureau. If you do not register, the judge will not be able to call you or your witnesses for the hearing.

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

Failure to Participate

> If you do not participate in the hearing, the judge may dismiss the appeal or issue a decision without considering your evidence or witnesses.

As a *courtesy* to the appellant, the record was left open for a grace period of 24 minutes after the hearing start time to give the appellant a *reasonable* opportunity to participate. Allowing additional time would prejudice the non-appealing party for appearing in a timely manner. Holding the appellant in default for failure to appear and participate is reasonable considering the time allocated for each unemployment hearing. This additional time period is more than reasonable under the circumstances.

The unemployment insurance decision had concluded the claimant was not eligible 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.**

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 §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.
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> 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.)

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 claimant was clearly directed to read the hearing notice and register a telephone number where he or she can be reached for the hearing. 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 his or her responsibility does not end there.

Each party is required to follow the prominent specific written instructions printed on the hearing notice. The claimant 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 she is not present *at the start* of hearing. As a courtesy, this appellant was granted an additional 24-minute grace period not required by statute or rule. Here, notwithstanding notice, opportunity and additional time, she failed to prosecute the case 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 intend to pursue this appeal, she need not take any action. If she intends to pursue this appeal, she may appeal the decision directly to the Employment Appeal Board at the address listed on the front page of this decision. Or, she may make a written request to the administrative law judge that the hearing be reopened. The written request should be mailed to the administrative law judge at the address listed on the front page of this decision and must explain the emergency or other good cause that prevented her from participating in the hearing at its scheduled time. If she intends to pursue this appeal, she must take one of these actions within 15 days after the mailing date of this decision.

DECISION:

The unemployment insurance decision dated July 5, 2018, reference 01, denying benefits remains in effect as the claimant/appellant is in default. The appeal is dismissed.

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

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Decision Dated and Mailed

tn/ec/rvs