

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRYER V BEERMANN
Claimant

EMERALD GREEN LAWNCARE INC
Employer

APPEAL 19A-UI-02950-H2T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/17/17
Claimant: Respondent (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:

An appeal was filed from a statement of charges mailed on February 8, 2019 for the fourth quarter of 2018. Notice of hearing was mailed to the party's last known addresses of record for a telephone hearing to be held at 11:00 a.m. on April 29, 2019. When the administrative law judge called Mr. Pickle, the employer to begin the hearing, she learned that he was in the middle of a doctor's appointment. The claimant had not yet registered for the hearing. The hearing was rescheduled for 2:00 p.m. on April 29, 2019. When the administrative law judge called the employer to begin the hearing at 2:00 p.m. Mr. Pickle's voice mail picked up the call. A message was left for Mr. Pickle to call back before 2:15 p.m. to participate in the hearing. Mr. Pickle did not call back to participate in the hearing.

ISSUE:

Should the appeal be dismissed based upon the employer/appellant not participating in the hearing?

FINDINGS OF FACT:

The party was properly notified of the scheduled hearing on this appeal. The employer/appellant failed to be available at the telephone number he provided he could be reached at for the hearing. The statement of charges indicated benefits paid to the claimant in the amount of \$848.53 would be charged to the employer's account.

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 Iowa Admin. Code r. 871-26.14(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 written 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. Iowa Admin. Code r. 871-26.14(7)c.

The employer/appellant appealed the fourth quarter 2018 statement of charges but failed to participate in the hearing. The employer/appellant has therefore defaulted on its appeal pursuant to Iowa Code § 17A.12(3) and Iowa Admin. Code r. 871-26.14(7), and the statement of charges remains in full force and effect.

DECISION:

The third quarter statement of charges mailed on February 8, 2019 employer account number 00312942 remains in full force and effect.

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

Decision Dated and Mailed

tkh/rvs