

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JACQUELINE FLOYD
Claimant

APPEAL NO: 18R-UI-01545-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QPS EMPLOYMENT GROUP INC
Employer

OC: 09/17/17
Claimant: Appellant (6R)

Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default
Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

An appeal was filed by the claimant, Jacqueline Floyd, from an unemployment insurance decision dated October 16, 2017, (reference 04) that denied benefits. After proper notice, a hearing was scheduled and conducted on December 22, 2017 with administrative law judge, Julie Elder. The claimant participated, and the employer did not. A hearing decision was rendered, allowing the claimant benefits. She has received benefits since the hearing decision.

The employer successfully requested reopening to the Employment Appeal Board (EAB), who remanded the matter for another hearing to allow the employer an opportunity to participate. Notice of the hearing was mailed to the claimant's last known address of record for a telephone hearing to be held at 10:00 a.m. on February 28, 2018. The issues listed on the hearing notice included whether the claimant filed a timely appeal and separation. A review of the Appeals Bureau's conference call system after 10:15 a.m. the same day shows the claimant/appellant, Jacqueline Floyd, failed to respond to the hearing notice instruction and provide a telephone number at which she could be reached for the scheduled hearing, and no hearing was held.

ISSUE:

Should the appeal be dismissed based upon the appellant not being available to participate in the scheduled hearing?

FINDINGS OF FACT:

The claimant/appellant was properly notified of the scheduled hearing on this appeal. The claimant/appellant, Jacqueline Floyd, failed to respond to the hearing notice instruction and provide a telephone number at which she could be reached, nor did she request a postponement of the hearing as required by the hearing notice.

The hearing notice instruction specifically advised the claimant:

Date: WED FEB 28, 2018
Iowa Time: 10:00 a.m.

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 Appeals Bureau. If you do not register, the judge will not be able to call you or your witness(es) for the hearing.

The agency's initial decision concluded that the claimant was disqualified 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 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 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. (Emphasis added.)

The appellant, Jacqueline Floyd, appealed the unemployment insurance decision but failed to be available to participate in the scheduled hearing. The appellant has therefore defaulted on her appeal pursuant to Iowa Code § 17A.12(3) and Iowa Admin. Code r. 871-24.14(7), and the decision remains in 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 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.

REMAND: The issue of whether the claimant has been overpaid benefits is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The appellant is in default and the appeal is dismissed. The unemployment insurance decision dated October 16, 2017, (reference 04) denying benefits remains in effect. **REMAND:** The issue of whether the claimant has been overpaid benefits is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
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

jlb/scn