

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

GABRIEL S DINEROS
Claimant

APPEAL NO: 15A-UI-00838-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 12/21/14
Claimant: Appellant (6)

Iowa Code § 17A.12(3) – Default Decision

Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default & Reopening the Record

STATEMENT OF THE CASE:

Gabriel Dineros filed a late appeal from the January 9, 2015, reference 01, unemployment insurance decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that he had voluntarily quit the employment on December 14, 2014 without good cause attributable to the employer. Notices of hearing were mailed to the parties' last-known addresses of record for a telephone hearing to be held at 10:00 a.m. on February 12, 2015. A review of the Appeals Bureau's conference call system indicates that the claimant/appellant failed to respond to the hearing notice instructions to provide a telephone number at which he could be reached for the hearing. Iowa Admin. Code r. 871-26.14(7). After the hearing record had closed and the employer had been dismissed from the hearing, the claimant contacted the Appeals Section. The claimant did not provide good cause to reopen the hearing record. 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.

ISSUES:

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

Did the claimant's late call provide good cause to reopen the record?

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The claimant/appellant, Gabriel Dineros, received proper notice of the hearing, but failed to follow the hearing notice instructions to provide a telephone number at which he could be reached for the hearing. Mr. Dineros did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. The first issue set for hearing was the question of whether Mr. Dineros' appeal was a timely appeal. When Mr. Dineros did not make himself available for the 10:00 a.m. hearing, the administrative law judge closed the record and dismissed the employer representative and employer witnesses and closed the record at

10:15 a.m. At 12:07 p.m., the claimant contacted the Appeals Section in reference to the hearing he had missed. The administrative law judge immediately returned the claimant's call. The claimant advised that he had received the hearing notice, had noted the time and date of the hearing, but had not read or followed the hearing notice instructions to provide a telephone number where he could be reached for the hearing.

The January 9, 2015, reference 01, unemployment insurance decision disqualified Mr. Dineros for benefits and relieved the employer of liability for benefits, based on an Agency conclusion that Mr. Dineros had voluntarily quit the employment on December 14, 2014 without good cause attributable to the employer.

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.

The 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 section 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. Instead, the presiding officer shall inquire ex parte as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

- 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 as scheduled. The claimant's telephone call to the Appeals Bureau more than two hours after the scheduled start of the hearing did not provide good cause to reopen the hearing record. Pursuant to Iowa Administrative Code rule 871-26.14(7), the claimant's failure to read or follow the instructions on the notice of hearing does not constitute good cause for reopening the record. The claimant/appellant defaulted on his 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 January 9, 2015, reference 01, unemployment insurance decision is affirmed. The decision that disqualified the claimant for benefits and that relieved the employer of liability for benefits, based on the December 14, 2014 voluntary quit remains in effect.

James E. Timberland
Administrative Law Judge
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Decision Dated and Mailed

jet/pjs