

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

NGOTHO NGIGI
Claimant

APPEAL NO: 19A-UI-02848-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IES COMMERCIAL INC
Employer

OC: 03/10/19
Claimant: Appellant (6)

Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(6) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

Ngotho Ngigi filed an appeal from the March 27, 2019, reference 01, decision that held he was disqualified for benefits and the employer's account would not be charged for benefits, based on the deputy's conclusion that Mr. Ngigi was discharged on March 13, 2019 for excessive unexcused absences. Mr. Ngigi requested an in-person hearing when he filed his appeal. A notice of hearing was mailed to the parties' last-known addresses of record for an in-person hearing to be held at 11:00 a.m. on April 23, 2019 at the Iowa Workforce Development administrative building at 1000 East Grand Avenue, Des Moines, Iowa. Neither Mr. Ngigi nor the employer appeared for the hearing. 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.

ISSUE:

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

FINDINGS OF FACT:

Claimant Ngotho Ngigi is the appellant in this matter. Mr. Gigi requested an in-person hearing when he filed his appeal. Mr. Ngigi was properly notified of the in-person appeal hearing set for 11:00 a.m. on April 23, 2019 through the hearing notice that was mailed to his last-known address of record on April 8, 2019. The hearing notice provided the date, time, and location of the hearing. Mr. Ngigi failed to appear for the in-person hearing he requested. At 10:49 a.m. on April 23, 2019, Mr. Ngigi telephoned the Appeals Bureau and spoke to a clerk. Mr. Ngigi confirmed that he was aware he was supposed to appear for an in-person hearing at 11:00 a.m. Mr. Ngigi told the Appeals Bureau clerk that he would be about 10 minutes late. The administrative law judge held the hearing record open until noon on April 23, 2019, but Mr. Ngigi did not appear at the hearing site or make further contact with the Appeals Bureau. The hearing room is adjacent to the lobby of 1000 East Grand Avenue in Des Moines. The administrative law judge repeatedly checked for Mr. Ngigi in the lobby and confirmed with the receptionist that Mr. Ngigi had not arrived. At noon, the administrative law judge closed the record and moved

on to other matters. As of the submission of this decision at 1:40 p.m. on April 23, 2019, the Appeals Bureau has still not heard further from Mr. Ngigi. Mr. Ngigi did not request a postponement of the hearing as required by the hearing notice.

The March 27, 2019, reference 01, decision held that Mr. Ngigi was disqualified for benefits and the employer's account would not be charged for benefits, based on the deputy's conclusion that Mr. Ngigi was discharged on March 13, 2019 for excessive unexcused absences.

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.

Iowa Administrative Code rule 871-26.14(6) provides:

26.14(6) In the event that one or more parties which have received notice for a contested case hearing fail to appear at the time and place of an in-person hearing, the presiding officer may proceed with the hearing. If the appealing party fails to appear, the presiding officer may decide the party is in default and dismiss the appeal.

Iowa Administrative Code rule 871-26.8(4) provides:

(4) A request to reopen a record or vacate a decision must be made in writing. If necessary, the presiding officer may hear, ex parte, additional information regarding the request for reopening. The granting or denial of such a request may be used as grounds for appeal to the employment appeal board of the department of inspections and appeals upon the issuance of the presiding officer's final decision in the case.

The claimant/appellant appealed the representative's decision but failed to participate in the hearing. The claimant/appellant has therefore defaulted on his appeal pursuant to Iowa Code §17A.12(3) and Iowa Admin. Code r. 871-24.14(6), and the representative's decision remains in force and effect.

If the claimant/appellant disagrees with this decision, pursuant to the rule, the claimant/appellant must 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 should be mailed to the administrative law judge at the address listed at the end of this decision and must explain the good cause that prevented the claimant/appellant from participating in the hearing at its scheduled time.

DECISION:

The March 27, 2019, reference 01, decision is affirmed. The decision that held the claimant was disqualified for benefits and the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant was discharged on March 13, 2019 for excessive unexcused absences, remains in effect.

James E. Timberland
Administrative Law Judge
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Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

Decision Dated and Mailed

jet/rvs