

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRY J ANDERSON
Claimant

APPEAL NO: 14A-UI-05058-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 02/09/14
Claimant: Appellant (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:

Terry Anderson filed an appeal from the March 12, 2014, reference 01, unemployment insurance decision that disqualified him for unemployment insurance benefits and that relieved the employer of liability for benefits based on an agency conclusion that he had been discharged for misconduct in connection with the employment. Notices of hearing were mailed to the parties' last-known addresses of record for a telephone hearing to be held at 11:00 a.m. on June 4, 2014. The hearing in this matter was consolidated with the hearing in Appeal Number 14A-UI-05059-JTT. The employer was available through Kris Rossiter. The claimant/appellant, Mr. Anderson, was not available at the telephone number he provided for the hearing and did not participate in 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.

At 12:02 p.m., Mr. Anderson contacted the Appeals Section about the hearing set for 11:00 a.m. The administrative law judge immediately returned the call to Mr. Anderson. After speaking with Mr. Anderson, the administrative law judge concluded there was not good cause to reopen the hearing record.

ISSUE:

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

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The claimant/appellant, Terry Anderson, was not available at the telephone number provided for the hearing. Mr. Anderson did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. The administrative law judge made two attempts to reach Mr. Anderson for the hearing at the time set for the hearing. On both attempts, Mr. Anderson did not answer and the call was eventually routed to his voicemail. The administrative law judge left a message for Mr. Anderson in connection with each attempt to

reach him. The administrative law judge left the hearing record open until 11:15 a.m. to provide Mr. Anderson with additional opportunity to make himself available for the hearing. The administrative law judge then dismissed the employer from the hearing. As of noon, June 4, 2014, Mr. Anderson had not responded to either message.

The March 12, 2014, reference 01 unemployment insurance decision disqualified Mr. Anderson for unemployment insurance benefits and relieved the employer of liability for benefits based on an agency conclusion that Mr. Anderson had been discharged for misconduct in connection with the employment.

At 12:02 p.m., on June 4, 2014, Mr. Anderson contacted the Appeals Section about the hearing set for 11:00 a.m. The administrative law judge immediately returned the call to Mr. Anderson. Mr. Anderson indicated that he had started a new job and was on break. Mr. Anderson indicated that he had forgotten about the hearing. Mr. Anderson confirmed that he had taken no steps to request postponement of the hearing despite knowing prior to the day of the hearing that he would need to work at the time of the hearing.

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. The claimant/appellant has therefore 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.

After speaking with the claimant and learning the particulars of why Mr. Anderson did not appear for the hearing or request postponement of the hearing, the administrative law judge concluded that Mr. Anderson had not presented good cause to reopen the hearing record. The administrative law judge advised Mr. Anderson of his appeal rights.

DECISION:

The Claims Deputy's March 12, 2014, reference 01, unemployment insurance decision is affirmed. The decision that disqualified the claimant for benefits and that relieved the employer of liability for benefits remains in effect. The claimant has not provided good cause to reopen the hearing record.

James E. Timberland
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-242-5144

Decision Dated and Mailed

jet/pjs