IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

CHELSEA R OUVERSON
Claimant

APPEAL NO. 14A-UI-12098-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

2 FOR U CHILDCARE WEST LLC
Employer

OC: 08/10/14
Claimant: Respondent (6)

Iowa Code § 17A.12(3) – Default Decision
871 IAC 26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

The employer appealed a representative's November 18, 2014 determination (reference 02) that held the clamant qualified to receive benefits and the employer's account subject to charge because the employer had not filed a timely protest. Notices of hearing were mailed to the parties' last known addresses of record informing them a telephone hearing would be held on December 11 at 10:30 a.m. A review of the Appeals Bureau's conference call system shows the employer/appellant failed to respond to the hearing notice and provide a telephone number at which a representative could be reached for the hearing. Neither employer nor the claimant participated in the hearing.

ISSUE:

Should the appeal be dismissed when the appellant does not participate in the hearing?

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The employer failed to provide a telephone number at which the employer's witness could be reached for the hearing. The employer did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The representative's November 18, 2014 determination concluded the claimant was qualified to receive benefits and the employer's account was subject to charge because the employer did not file a timely protest.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedures 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.

The Agency rules at 871 IAC 26.14(7) provide 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 rules further state that failure to read or follow the instructions on the notice of hearing is not good cause for reopening the record. 871 IAC 26.14(7)c.

The employer appealed the November 18, 2014 determination but failed to participate in the hearing. The employer defaulted on its appeal. Based on Iowa Code § 17A.12(3) and 871 IAC 24.14(7), the representative's November 18, 2014 determination remains in full force and effect.

If the employer disagrees with this decision, a request must be made 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 the decision and must explain the emergency or other good cause that prevented the claimant from participating in the hearing at its scheduled time.

DECISION:

The representative's November 18, 2014 determination (reference 02) is affirmed. The employer did not file a timely protest. As a result, the employer's account is subject to charge.

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

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Decision Dated and Mailed

dlw/css