

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PROPHET LIVINGOOD

Claimant

APPEAL NO: 15A-UI-08929-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QPS EMPLOYMENT GROUP INC

Employer

OC: 03/15/15

Claimant: Appellant (6/R)

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

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

STATEMENT OF THE CASE:

Prophet Livingood filed an appeal from the July 29, 2015, reference 03, unemployment insurance decision that denied benefits effective July 12, 2015, based on an Agency conclusion that he was unduly restricting his availability for work. 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 August 26, 2015. At the time of the hearing, Mr. Livingood was not available at the telephone number he had provided for the hearing and did not participate in the hearing. The employer was available through Rhonda Hefter De Santisteban and Krystal Hauersperger. 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:

The appeal hearing was set for August 26, 2015 at 10:00 a.m. The parties were properly notified of the hearing by notice mailed on August 12, 2015. On August 14, 2015, Prophet Livingood responded to the hearing notice by providing a telephone number where he could be reached for the hearing. Mr. Livingood spoke directly with an Appeals Section clerk, who would have told Mr. Livingood that if he did not hear from the administrative law judge within five minutes of the start of the hearing, he should contact the Appeals Section. The number Mr. Livingood provided for the hearing was the same number he had used for the July 28, 2015 fact-finding interview. Mr. Livingood is the claimant and the appellant in this matter. At the time of the hearing, Mr. Livingood was not available at the number he had provided for the hearing. The administrative law judge made two attempts to reach Mr. Livingood at the number he had provided for the hearing. On each attempt, the administrative law judge stayed on the line for an extended period until the Clear2There system provided a message that Mr. Livingood was not answering. Mr. Livingood's phone number was not connected to an answering machine and the administrative law judge was, therefore, unable to leave a message for Mr. Livingood.

Mr. Livingood did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

This decision is being entered at 10:45 a.m. Thus far, the claimant has made no contact with the Appeals Section to indicate that he is available for the hearing he missed at 10:00 a.m.

The July 29, 2015, reference 03, unemployment insurance decision denied benefits effective July 12, 2015, based on an Agency conclusion that Mr. Livingood was unduly restricting his availability for work.

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 § 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.

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 emergency or other good cause that prevented the appellant from participating in the hearing at its scheduled time.

The administrative law judge notes that the claimant appears to have separated from the employment, but the separation has not been adjudicated. For that reason, this matter will be remanded to the Benefits Bureau for adjudication of the claimant's eligibility for benefits and the employer's liability for benefits based on the *separation* that occurred on or about July 9, 2015.

DECISION:

The July 29, 2015, reference 03, unemployment insurance decision is affirmed. The decision that denied benefits effective July 12, 2015, based on an Agency conclusion that the claimant was unduly restricting his availability for work, remains in effect.

This matter is remanded to the Benefits Bureau for adjudication of the claimant's eligibility for benefits and the employer's liability for benefits based on the *separation* that occurred on or about July 9, 2015.

James E. Timberland
Administrative Law Judge
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Decision Dated and Mailed

jet/css