

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARK E DORR
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL NO: 14A-UI-04582-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/10/13
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:

An appeal was filed from a representative's unemployment insurance decision dated April 22, 2014 (reference 04) that concluded claimant was overpaid unemployment insurance benefits after a separation from employment. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for May 21, 2014. A review of the Appeals Bureau's conference call system indicates that the appellant (claimant) failed to respond to the hearing notice and provide a telephone number at which the appellant could be reached for the hearing and did not participate in the hearing. Based on the 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.

Claimant called 20 minutes after the hearing was to start. Claimant did not read and follow the instructions on the hearing notice. Claimant actually misinterpreted the instructions concerning registering a telephone number. Claimant had a prior hearing and had followed the instructions. Claimant thought that his prior appeals would register his telephone number for this appeal. Claimant did not understand the instructions.

ISSUE:

Should the appeal be dismissed based on the appellant's failure to appear and participate?

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing for this appeal. The appellant failed to provide a telephone number at which the appellant could be reached for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Official notice of the Clear 2 There hearing control screen is taken to establish that appellant did not call the appeals bureau to provide a telephone number and name of a representative.

The representative's decision had concluded that the claimant was overpaid unemployment insurance benefits.

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. 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 appellant appealed the representative's decision but failed to participate in the hearing. The appellant has therefore defaulted on appellant's appeal pursuant to Iowa Code §17A.12(3) and Iowa Admin. Code r. 24.14(7), and the representative's decision remains in force and effect.

Iowa Admin. Code r. 871-26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with 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 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.

At issue is a request to reopen the record made after the hearing had concluded. The request to reopen the record is denied because the party making the request failed to participate by reading and following the instructions on the hearing notice.

Even if claimant had timely participated the overpayment would have been affirmed because it was created by a January 3, 2014 decision. It is the prior administrative law judge decision that should have been appealed. Claimant did not appeal that decision because he was told it was a final decision by the administrative law judge. Claimant did not believe he could appeal.

DECISION:

The representative's decision (reference 04) dated April 22, 2014 is affirmed. The decision finding claimant overpaid unemployment benefits remains in effect.

Marlon Mormann
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-242-5144

Decision Dated and Mailed

mdm/pjs