

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALEXANDRA J LUEDERS
Claimant

APPEAL NO: 17A-UI-00502-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CROTHALL HEALTHCARE INC
Employer

OC: 12/04/16
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:

Alexandra Lueders filed a timely appeal from the January 6, 2017, reference 01, decision that denied benefits effective December 4, 2016, based on an agency conclusion that Ms. Lueders was on a leave of absence that she requested and the employer approved and, therefore, could not be deemed available for work within the meaning of the law. A notice of hearing was mailed to the parties' last-known addresses of record for a telephone hearing to be held at 2:00 p.m. on February 3, 2017. The employer was available for the hearing through Sharon Ellis and Chrissy Govek. Ms. Lueders did not respond to the hearing notice instructions to register a telephone number at which she could be reached for the hearing and did not participate in the hearing. When Ms. Lueders did not appear for the hearing, the administrative law judge closed the hearing record and dismissed the employer. Ms. Lueders subsequently contacted the Appeals Bureau in reference to the hearing she has missed. Based upon Ms. Lueders' failure to participate in the hearing, her late call, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

ISSUES:

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

Has Ms. Lueders provided good cause to reopen the hearing record.

FINDINGS OF FACT:

Claimant Alexandra Lueders is the appellant in this matter. On January 20, 2017, the Appeals Bureau mailed a hearing notice to Ms. Lueders' last-known address of record to provide notice of the appeal hearing set for 2:00 p.m. on February 3, 2017. Ms. Lueders received the hearing notice in a timely manner, noted the date and time of the hearing, but did not note the text immediately below the date and time of the hearing: "You must register for the hearing immediately!" Below that were the instructions that Ms. Lueders needed to follow to register a telephone number at which she could be reached for the hearing. The employer had complied with the instructions to register a telephone number for the hearing and was available for the

hearing through Sharon Ellis and Chrissy Govek. The administrative law judge left the hearing record open until 2:15 p.m. to provide Ms. Lueders with additional opportunity to register a telephone number for the hearing and participate in the hearing. When Ms. Lueders still did not appear for the appeal hearing, the administrative law judge closed the record and dismissed the employer from the hearing. Ms. Lueders had not requested postponement of the hearing as required by the hearing notice.

At 3:47 p.m. on February 3, 2017, Ms. Lueders telephoned the Appeals Bureau in reference to the hearing she had missed at 2:00 p.m. At that time the administrative law judge asked questions of Ms. Lueders to determine whether there was good cause to reopen the hearing record. Ms. Lueders confirmed timely receipt of the hearing notice. Ms. Lueders advised that she had read the hearing notice sufficiently to note the date and time of the hearing, but had not noted the instructions to register a telephone number for the hearing.

The January 6, 2017, reference 01, decision denied benefits effective December 4, 2016, based on an agency conclusion that Ms. Lueders was on a leave of absence that she requested and the employer approved and, therefore, could not be deemed available for work within the meaning of the law.

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.

Ms. Lueders appealed the claims deputy's decision, but failed to participate in the hearing. Ms. Lueders defaulted on her appeal pursuant to Iowa Code §17A.12(3) and Iowa Admin. Code rule 871-24.14(7). Pursuant to Iowa Admin. Code rule 871-24.14(7)(c), Ms. Lueders' failure to read and follow the hearing notice instructions to register a telephone number for the hearing does not provide good cause to reopen the hearing record. Based on the default and the lack of good cause to reopen the hearing record, the claims deputy's decision remains in effect.

Because the question of whether a claimant is able to work and available for work within the meaning of the law involves a week-by-week determinate, there is nothing to prevent Ms. Lueders for making additional weekly claims and renewing her assertion that is able to work and available for work in connection with those additional claims. The administrative law judge notes that Ms. Lueders discontinued her weekly claims after the benefit week that ended January 7, 2017. Accordingly, the claim for benefits has lapsed and Ms. Lueders would first need to reactivate the claim before she would be able to make additional weekly claims.

DECISION:

The January 6, 2017, reference 01, decision is affirmed. The claimant defaulted on her appeal. There is not good cause to reopen the appeal hearing record. The decision that denied benefits effective December 4, 2016, based on an agency conclusion that the claimant was on a leave of absence that she requested and the employer approved and, therefore, could not be deemed available for work within the meaning of the law, remains in effect.

James E. Timberland
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Decision Dated and Mailed

jet/rvs