

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANDY L REINHARDT
Claimant

APPEAL NO. 14A-UI-10921-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THEISENS INC
Employer

OC: 09/14/14
Claimant: Appellant (6)

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

STATEMENT OF THE CASE:

An appeal was filed from a representative's unemployment insurance decision dated October 8, 2014 (reference 01) that concluded Randy L. Reinhardt (claimant/appellant) was not eligible for unemployment insurance benefits after a separation from employment from Theisens, Inc. (employer/respondent). Notices of hearing were mailed to the parties' last-known addresses of record for a telephone hearing to be held at 8:30 a.m. on November 13, 2014. The claimant received the hearing notice and responded by calling the Appeals Section on November 6, 2014. He indicated that he would be available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, the claimant was not available; therefore, the claimant did not participate in the hearing. The administrative law judge excused the employer's representative and considered the record closed at 8:50 a.m. At 8:56 a.m., the claimant called the Appeals Section and requested that the record be reopened. 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.

ISSUE:

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

FINDINGS OF FACT:

The claimant/appellant was properly notified of the scheduled hearing on this appeal. The employer/respondent received the hearing notice prior to the November 4, 2014 hearing. The hearing notice instructions specifically advise parties, "If you do not participate in the hearing because you do not register for the hearing, register late, or cannot be reached at the number you provided when the judge calls for the hearing, the appeal may be dismissed or decided based on other available evidence." The claimant/appellant failed to be available at the

scheduled day and time set for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. The reason the claimant/appellant was unavailable was that he was taking his foster daughter to school.

The record was left open, as a courtesy to the appellant, in this case for 20 minutes after the hearing start time to give the claimant/appellant a reasonable opportunity to participate. This reasonable amount of time is appropriate because if a hearing were conducted with the non-appealing party alone it would have concluded in 15 minutes or less. Allowing additional time would prejudice the non-appealing party for appearing in a timely manner. The 15-minute wait time is also a reasonable period to hold the record open as insufficient time would remain to conduct a quality due process hearing in the time allotted by the appeals bureau. Each two party hearing is allowed 60 minutes and a one party hearing allowed 30 minutes. Holding the appellant in default for failure to appear and participate during a 15-minute window after the hearing start time is entirely reasonable considering the time allocated for unemployment hearings.

The representative's decision concluded that the claimant/appellant was not eligible for unemployment insurance benefits after a separation from employment on or about August 5, 2014. While Agency records show that the claimant had some wages after August 5, it was not able to be determined that the amount of wages after that date were sufficient (at least \$3,300.00) for the claimant to have requalified by the time he established a claim for unemployment insurance benefits effective September 14, 2014.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedure 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.

Agency rule at 871 IAC 26.14(7) provides:

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.

Due process requires notice and an opportunity to be heard, both of which were provided to the parties. This rule does not provide exceptions for good intentions and/or a party contacting the Appeals Bureau within a reasonable amount of time after the hearing is scheduled. It can be assumed an appellant intends to participate in the hearing simply by the fact an appeal is filed, but their responsibility does not end there; all parties are required to follow the specific written instructions printed on the hearing notice. Due process does not require the non-appealing party and the Appeals Bureau to sit and wait for indefinite periods see if an appellant wants to prosecute the appeal. The appellant filed the appeal and is held solely responsible for going forward with the case in an expeditious manner. The rule holds appellant in default if not present at the start of hearing. As a courtesy, appellant was granted additional time not required by statute or rule. Here, notwithstanding the additional time, and the notice and opportunity to participate, the appellant failed to prosecute the case expeditiously.

The Iowa Supreme Court has opined that a default should not be set aside for ordinary negligence or want of ordinary care. Defaults should not be set aside where the movant ignores plain mandates with ample opportunity to abide. See *Houlihan v. Emp't Appeal Bd.*, 545 N.W.2d 863 (Iowa 1996). Here the plain and simple mandate is to read the hearing notice and register a telephone number into the conference call system so that the party can be reached. The second simple and obvious mandate is to be available at the number provided. Lastly, the reasonable expectation is that a party should call the Appeals Bureau within five minutes after the start time for the hearing if the party does not get a call. Here, the claimant/appellant did not call the Appeals Bureau until more than 25 minutes after the scheduled start time for the hearing. This delay was not reasonable. He knew or should have known when he called in to provide his number for the hearing that if he followed his routine practice of taking his foster daughter to school that he would not be able to take the call at that time, but yet he took no action to seek to reschedule the hearing or find some other arrangement for getting his foster daughter to school this day.

The claimant/appellant appealed the representative's decision but failed to participate in the hearing. The claimant/appellant has therefore defaulted on its appeal pursuant to Iowa Code § 17A.12(3) and Rule 871 IAC 24.14(7), and the representative's decision remains in force and effect.

If the claimant/appellant disagrees with this decision, the claimant/appellant may appeal the decision directly to the Employment Appeal Board, whose address is listed on the cover page of this decision.

DECISION:

The representative's decision (reference 01) dated October 8, 2014 is affirmed. The decision denying benefits remains in effect.

Lynette A. F. Donner
Administrative Law Judge
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Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
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Decision Dated and Mailed

ld/pjs