

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LINDA PHANOUVONG
Claimant

HY-VEE INC
Employer

APPEAL 15A-UI-04735-DGT

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

**OC: 03/22/15
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 an unemployment insurance decision dated April 13, 2015, (reference 02) that denied benefits. Notice of hearing was mailed to the parties' last known addresses of record for a telephone hearing to be held at 11:30 a.m. on May 28, 2015. A review of the Appeals Bureau's conference call system shows the claimant/appellant was not available at the telephone number provided for the hearing and did not participate in the hearing. The appellant called at 12:03 p.m., after the hearing record was closed at 11:45 a.m., in response to the administrative law judge's (ALJ) message.

ISSUES:

Should the hearing record be reopened?

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

FINDINGS OF FACT:

The party was properly notified of the scheduled hearing for this appeal. The appellant was not available at the telephone number provided for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. The appellant was not available for the hearing at the number provided because she did not hear the phone when it rang.

The representative's decision concluded that the claimant was ineligible for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedure 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 ALJ 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 ALJ shall vacate the decision and conduct another hearing.

Agency rule Iowa Admin. Code r. 871-26.14(7) provides 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 ALJ 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 rule further states that failure to read or follow the instructions on the notice of hearing is not good cause for reopening the record. Iowa Admin. Code r. 871-26.14(7)c.

The appellant appealed the unemployment insurance decision but failed to participate in the hearing. The appellant has not established emergency or other good-cause reason for failing to be available for the hearing at the number provided in response to the hearing notice instructions and the record shall not be reopened. The appellant has therefore defaulted on her appeal pursuant to Iowa Code § 17A.12(3) and Iowa Admin. Code r. 871-24.14(7), and the decision remains in force and effect.

DECISION:

The unemployment insurance decision dated April 13, 2015 (reference 02), is affirmed. The record shall not be reopened. The decision denying benefits remains in effect.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/css/css