

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DAVID EARLE
Claimant

MANPOWER INTERNATIONAL INC
Employer

APPEAL NO. 14A-UI-06079-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/02/13
Claimant: Respondent (6)

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

STATEMENT OF THE CASE:

An appeal was filed from a representative's unemployment insurance decision dated June 2, 2014 (reference 02) that concluded David Earle (claimant/respondent) was eligible for unemployment insurance benefits after a separation from employment from Manpower International, Inc. (employer/appellant). Notices of hearing were mailed to the parties' last-known address of record for a telephone hearing to be held at 1:00 p.m. on July 8, 2014. A review of the Appeals Bureau's conference call system indicates that the employer/appellant was not available at the telephone number provided for the hearing so no hearing was held.

ISSUE:

The issue is whether the underlying decision should be affirmed and the appeal should be effectively dismissed based upon the employer/appellant's failure to participate in the hearing.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The employer/appellant received the hearing notice prior to the hearing scheduled on July 8, 2014. The employer/appellant provided its telephone number but was not available when called at that number and a message was left. 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 employer/appellant's voice mail said it was having telephone problems and an email could be sent. The administrative law judge sent the employer/appellant an email and advised if a call was returned within minutes, the hearing could go forward. The employer/appellant could not be reached at the number provided when called for the hearing and did not promptly respond to the courtesy email. The employer/appellant called the Appeals Section at 1:23 p.m. The employer/appellant denied having phone problems and denied receiving a telephone call for the hearing so the recorded call was played for the employer/appellant.

The representative's decision concluded that the claimant/respondent was eligible 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 judge 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 judge shall vacate the decision and conduct another hearing.

Agency rule 871 IAC 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 judge may decide the appealing party is in default and dismiss the appeal as provided in Iowa Code § 17A.12(3). 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 and all parties are required to follow the specific written instructions printed on the hearing notice. Due process requires notice and an opportunity to be heard, both of which were provided to the parties.

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. 871 IAC 26.14(7)c. In the case herein, the employer/appellant has failed to establish the necessary good cause required to reopen the hearing record. Consequently, the employer/appellant has therefore defaulted on its appeal pursuant to Iowa Code § 17A.12(3) and 871 IAC 26.14(7), and the representative's decision remains in force and effect.

DECISION:

The representative's unemployment insurance decision dated June 2, 2014 (reference 02) is affirmed. The decision granting benefits remains in effect.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/can