

IOWA DEPARTMENT OF INSPECTIONS AND
APPEALS
Division of Administrative Hearings
Wallace State Office Building
Des Moines, Iowa 50319

Appeal Number: 17IWDUI269
OC: 12/25/16
Claimant: Appellant (6)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

BREON L SMITH
3713 SW 37TH ST
DES MOINES IA 50321

IOWA WORKFORCE DEVELOPMENT
REEMPLOYMENT SERVICES
COORDINATOR
RONEE SLAGLE & KRISTINA HUGHES

JONI BENSON, IWD
NICHOLAS OLIVENCIA, IWD
EMILY CHAFA, UI APPEALS MANAGER

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed Notice of Appeal, directly to the **Employment Appeal Board, 4TH Floor Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to the department. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

June 20, 2017

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE

Breon L Smith filed an appeal from a March 7, 2017 unemployment insurance decision by Iowa Workforce Development (IWD) (reference 05), which concluded that Mr. Smith was ineligible to receive unemployment benefits as of February 26, 2017 and continuing until he reported for the assessment because he had been mailed a notice to report for a reemployment and eligibility assessment on March 2, 2017 but did not report. The issue certified for appeal was whether IWD correctly determined that Breon Smith is ineligible to receive unemployment insurance benefits because he failed to participate in reemployment services without justifiable cause. The Notice of Telephone Hearing was mailed to the parties' last known addresses of record on June 2, 2017 and

scheduled the hearing for June 20, 2017 at 9:30 a.m. before Administrative Law Judge (ALJ) Margaret LaMarche. The notice clearly instructed the parties to call in to a toll-free hearing number at the time scheduled for the hearing. The notice stated that the ALJ would wait five minutes after the time the hearing was scheduled to begin to allow all parties to call in. The notice also stated that if a party did not call in within that time, then the party would not be able to participate in the hearing.

On June 20, 2017 at 9:30 a.m., ALJ Margaret LaMarche and IWD Representative Kristina Hughes called in for the telephone hearing and waited for 10 minutes. By 9:40 a.m., Breon Smith still had not called in for the hearing. Based upon Mr. Smith's failure to participate in the hearing and the applicable law, the ALJ enters the following findings of fact, reasoning and conclusions of law and decision.

ISSUE

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

FINDINGS OF FACT

The parties were properly notified of the scheduled hearing on this appeal. The Notice of Telephone Hearing that was sent to Breon Smith at his address of record has not been returned by the post office. Mr. Smith failed to call in to the hearing phone number at the time scheduled in the Notice of Telephone Hearing.

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 871 Iowa Administrative Code 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.

Breon L Smith appealed the unemployment decision but failed to call in to participate in the hearing. He has therefore defaulted on his appeal pursuant to Iowa Code §17A.12(3) and 871 Iowa Administrative Code 26.14(7), and his appeal is dismissed. The appealed decision shall remain in force and effect.

If Breon L Smith disagrees with this decision, he may ask to have the hearing reopened, as provided by 871 Iowa Administrative Code 26.14(6) and 26.8(3). To do so, Mr. Smith must file a written request to reopen the hearing within 15 days after the mailing date of this decision. The written request should be mailed to the administrative law judge at the address listed at the beginning of this decision and must explain the emergency or other good cause that prevented him from participating in the hearing at its scheduled time.

DECISION

The unemployment insurance decision (reference 05) dated March 7, 2017, is **AFFIRMED** and remains in effect. The appeal is **DISMISSED**. Iowa Workforce Development shall take any action necessary to implement this decision.

mlm