IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

THOMAS P BRANDT Claimant **IOWA WORKFORCE DEVELOPMENT DEPARTMENT**	**APPEAL 18A-UI-02181-DB-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 04/09/17** **Claimant: Appellant (6)**

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

The claimant/appellant, Thomas P. Brandt, filed an appeal from the February 5, 2018 (reference 03) unemployment insurance decision that concluded he was not able to perform work due to surgery. Benefits were denied effective December 17, 2017. Notice of hearing was mailed to the appellant's last known address of record for a telephone hearing scheduled for March 14, 2018. A review of the Appeals Bureau's conference call system indicates that the appellant did not register a telephone number to be contacted at for the start of the hearing. Because the appellant failed to follow the instructions on the notice of hearing, and was not available by registering a telephone number to be contacted at the time and date scheduled for this appeal hearing, no hearing was held.

ISSUE:

Should the appeal be dismissed based on the appellant's failure to appear and participate?

FINDINGS OF FACT:

The appellant was properly notified of the scheduled hearing for this appeal. The appellant failed to register a telephone number to be called at the time scheduled for this appeal hearing as required by the hearing notice. The appellant did not request a postponement of the hearing. No hearing was held.

The hearing notice instruction specifically advises parties:

> Telephone Hearing:
>
> | | | |
> |---|---|---|
> | WED | MAR 14, 2018 | Date |
> | 11:00 AM | | Iowa Time |
>
> **You must register for the hearing immediately! You must register your phone number and the name(s) and phone number(s) of any witness(es) with the Appeals Bureau. If you do not register, the judge will not be able to call you or your witness(es) for the hearing.**

The back page of the hearing notice provides further instruction and warning:

> **Failure to Participate**
> If you do not participate in the hearing, the judge may dismiss the appeal or issue a decision without considering your evidence or witness(es).

This information is provided in the Spanish language as well.

The record was left open for a grace period of 20 minutes after the hearing start time to give the appellant a *reasonable* opportunity to participate. Holding the appellant in default for failure to appear and participate during a 20-minute window after the hearing start time is reasonable considering the time allocated for each unemployment hearing. Allowing this additional time period is more than reasonable under the circumstances. The unemployment insurance decision had concluded that the claimant was ineligible for benefits effective December 17, 2017.

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 rules at Iowa Admin. Code r. 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 § 17A.12(3). The record may be reopened if the absent party makes a request to reopen the hearing in writing 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.
> c. **Failure to read or follow the instructions on the notice of hearing *shall not* constitute good cause for reopening the record.** (Emphasis added.)

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 instruction with ample opportunity to comply. See *Houlihan v. Emp't Appeal Bd.*, 545 N.W.2d 863 (Iowa 1996). Here the clear directive is to read the hearing notice and register a telephone number where the party can be reached for the hearing. The second part of that directive is to be available at the number provided at the date and time of the hearing. Further, if the party misses or does not receive the hearing call, he or she may call the telephone numbers on the hearing notice. Due process requires notice and an opportunity to be heard, both of which were provided to each party. *The rule does not provide exceptions for good intentions and/or a party contacting the Appeals Bureau within a 'reasonable' or certain amount of time after the hearing is scheduled.* It is assumed an appellant intends to participate in the hearing simply by the fact that an appeal is filed, but the appellant's responsibility does not end there. Each party is required to follow the prominent specific written instructions printed on the hearing notice. The appellant filed the appeal and is held solely responsible for going forward with the case in a prompt and deliberate manner. The rule holds an appellant in default if not present *at the start* of hearing. As a courtesy, appellant was granted an additional 20-minute grace period not required by statute or rule.

Here, notwithstanding notice, opportunity and additional time, the appellant failed to prosecute the case at the appointed date and time without providing a good-cause reason for the delay or failure to do so. Accordingly, the appellant is in default and the appeal shall be dismissed. Iowa Code § 17A.12(3) and Iowa Admin. Code r. 26.14(7). The unemployment insurance decision remains in force and effect. If the appellant does not intend to pursue this appeal, the appellant need not take any action. If the appellant intends to pursue this appeal, the appellant must make a written request to the administrative law judge that the hearing be reopened 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 end of this decision and must explain the emergency or other good cause that prevented the appellant from participating in the hearing at its scheduled time. The appellant also has the option to appeal the decision directly to the Employment Appeal Board at the address listed in the caption appeal rights information.

DECISION:

The February 5, 2018 (reference 03) unemployment insurance decision concluding that the claimant was ineligible for benefits effective December 17, 2017 remains in effect as the appellant is in default and the appeal is dismissed.

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Dawn Boucher
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

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Decision Dated and Mailed

db/rvs