

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CYNTHIA K LECKBAND
Claimant

APPEAL 20R-UI-04230-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA WORKFORCE DEVELOPMENT
Employer

**OC: 05/13/18
Claimant: Appellant (6)**

Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Code § 96.16(4) – Offenses and Misrepresentation
Iowa Admin. Code r. 871-25.1 – Misrepresentation & Fraud
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, Cynthia K. Leckband, filed an appeal from the March 5, 2020 (reference 03) Iowa Workforce Development (“IWD”) unemployment insurance decision which concluded the claimant was overpaid unemployment insurance benefits because she failed to accurately report earnings while also filing claims for unemployment insurance benefits. IWD also imposed a 15% administrative penalty due to misrepresentation.

A first hearing was scheduled for April 13, 2020. The claimant did not participate and the appeal was dismissed. Upon successfully requesting reopening to the Employment Appeal Board, the matter was remanded for a new hearing to allow the claimant to participate.

After proper notice, a telephone hearing scheduled for 3:00 p.m. on June 3, 2020. The claimant registered a phone number with the Appeals Bureau, but was unavailable when called at the scheduled time of hearing.

Her voicemail mail was full so the administrative law judge was unable to leave a voicemail. Three attempts were made to call the claimant, (3:02, 3:03 and 3:11) and the record held open for grace period to allow her to contact IWD when she did not receive the anticipated phone call. No hearing was held.

ISSUES:

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

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing for this appeal. The claimant/appellant, Cynthia K. Leckband, failed to be available when called at the time

scheduled for this appeal hearing as required by the hearing notice. The administrative law judge made three calls to the claimant and was unable to leave a voicemail because her voicemail was full. The claimant/appellant did not request a postponement of the June 3, 2020 hearing. No hearing was held.

The hearing notice instruction specifically advised the parties:

Date: WED JUN 03, 2020
Iowa Time: 3:00 p.m.

The back page of the hearing notice provided 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. The Appeals Bureau does not have a phone number for this hearing unless you provide it to us by following the instructions on the other side of this page. If you do not follow those instructions the judge will not call you for the hearing. 871 IAC 26.14(7).

The agency's decision concluded the claimant was overpaid unemployment insurance benefits because she failed to accurately report earnings from when concurrently filing claims for unemployment insurance benefits. IWD also imposed a 15% administrative penalty due to misrepresentation.

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.*

The claimant/appellant, Cynthia K. Leckband, appealed the unemployment insurance decision but failed to be available to participate in the scheduled hearing. 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.

If the claimant/appellant disagrees with this decision, a written request to reopen the record must be made to the administrative law judge within 15 days after the mailing date of this decision. The 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 the scheduled time.

DECISION:

The claimant/appellant is in default and the appeal is dismissed. The unemployment insurance decision dated March 5, 2020, (reference 03) establishing an overpayment of benefits and imposing a 15% penalty remains in effect.



Jennifer L. Beckman
Administrative Law Judge
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Iowa Workforce Development
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June 19, 2020
Decision Dated and Mailed

jlb/scn