

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JON M BOTTEMA
Claimant

APPEAL 17A-UI-04291-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 06/05/16
Claimant: Appellant (6)

Iowa Code § 96.3(7) – Overpayment of Benefits
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, Jon Bottema, filed an appeal from the unemployment insurance decision dated April 11, 2017, reference 03, that assessed an overpayment of benefits. The notice of hearing was mailed to the claimant's last known addresses of record for a telephone hearing scheduled for May 11, 2017, at 1:05 p.m. A review of the Appeals Bureau's conference call system indicates that the appellant failed to respond to the hearing notice and provide a telephone number where he could be reached for the scheduled hearing. Therefore, no hearing was held.

ISSUE:

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

FINDINGS OF FACT:

The claimant/appellant was properly notified of the scheduled hearing for this appeal. The appellant failed to provide a telephone number at which he could be reached for the scheduled hearing as required by the hearing notice. He did not request a postponement of the hearing. As a result, no hearing was held. Official notice of the Clear2there hearing screen is taken to establish that appellant did not call or register online with the Appeals Bureau to provide a telephone number and/or name of a representative.

The hearing notice instruction specifically advises parties, in English and Spanish:

You must register for the hearing immediately!

You must register your phone number and the name(s) and phone number(s) of any witnesses 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 hearing notice included the date and time of the telephone hearing:

THU MAY 11, 2017
1:05 PM Iowa Time

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

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).

As a *courtesy* to the appellant the record was left open for a minimum grace period after the hearing start time to give the appellant a *reasonable* opportunity to participate. Allowing additional time would prejudice the non-appealing party for appearing in a timely manner. Holding the appellant in default for failure to appear and participate during a 15-minute window after the hearing start time is reasonable considering the time allocated for each unemployment hearing. The additional time allowed this appellant was more than reasonable.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedure Act at Iowa Code § 17A.12(3) states, 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.

Iowa Admin. Code r. 26.14(7) states, in pertinent part:

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 under subrule 26.8(3) and shows good cause for reopening the hearing.

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 held 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 requires the claimant/appellant to read the hearing notice and register a telephone number where he or she 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 appealing 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 in this case. *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 claimant 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 grace period not required by statute or rule. Here, notwithstanding notice, opportunity and additional time, she failed to follow directions to proceed with the case at the appointed date and time without providing a good-cause reason for the delay or failure to do so. Therefore, 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, he need not take any action. If he intends to pursue this appeal, he may appeal the decision directly to the Employment Appeal Board at the address listed in the caption appeal rights information. Or, he may make a written request to the administrative law judge that the hearing be reopened. 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. If he intends to pursue this appeal, the appellant must take one of these actions within 15 days after the mailing date of this decision.

DECISION:

The unemployment insurance decision issued on April 11, 2017, reference 03, denying the request to backdate the claim, remains in effect because the appellant is in default. The appeal is dismissed.

Terence Nice
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Decision Dated and Mailed

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