

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CEENAN J BALLARD**  
Claimant

**REM IOWA COMMUNITY SERVICES INC**  
Employer

**APPEAL 17A-UI-01691-SC**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/08/17**  
**Claimant: Appellant (6)**

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Iowa Code § 17A.12(3) – Default Decision  
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default  
Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

Ceenan J. Ballard (claimant) filed an appeal from an unemployment insurance decision dated February 10, 2017, reference 02, that denied benefits based upon the determination REM Iowa Community Services, Inc. (employer) discharged him for sleeping on the job. Notice of hearing was mailed to the parties' last known addresses of record for a hearing to be held in Davenport, Iowa, at 1:00 p.m. on May 9, 2017. The claimant/appellant failed to appear in response to the hearing notice instruction and no hearing was held.

**ISSUE:**

Should the appeal be dismissed based upon the appellant not responding to the hearing notice instruction and not appearing for the scheduled hearing?

**FINDINGS OF FACT:**

The party was properly notified of the scheduled hearing on this appeal. The appellant failed to respond to the hearing notice instruction and appear for the scheduled hearing, and did not request a postponement of the hearing. The record remained open for an additional 20 minutes to give the appellant a chance to appear.

The representative's decision concluded that the claimant/appellant was not 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 Iowa Admin. Code r. 871-26.14(7) provides that if the appealing party has not responded to a notice of hearing by appearing by the scheduled starting time of the hearing, the judge 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 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. Iowa Admin. Code r. 871-26.14(7)c.

The appellant appealed the unemployment insurance decision but failed to appear to participate in the hearing. The appellant has therefore defaulted on his appeal pursuant to Iowa Code § 17A.12(3) and Iowa Admin. Code r. 871-26.14(7), and the decision remains in force and effect.

If the appellant disagrees with this decision, a request to reopen the record may 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 appearing to participate in the hearing at the scheduled time. The appellant may also appeal the decision within 15 days of the date of mailing to the Employment Appeal Board at the address identified on the first page of this decision.

**DECISION:**

The appellant is in default and the appeal is dismissed. The unemployment insurance decision dated February 10, 2017, reference 02, denying benefits remains in effect.

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Stephanie R. Callahan  
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

src/rvs