

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**EVA R MUNGUIA**  
Claimant

**CAPTIVE PLASTICS INC**  
Employer

**APPEAL NO: 15R-UI-09838-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/31/15  
Claimant: Appellant (6)**

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

**STATEMENT OF THE CASE:**

Eva R. Munguia, the claimant, filed an appeal from the June 15, 2015, reference 01, unemployment insurance decision that denied benefits. A telephone hearing was conducted on July 23, 2015 at which time the claimant participated. The employer participated by Ms. Mallory Rosenberger, Human Resource Manager. Two potential witnesses for the claimant, Soul Munguia and Jose Castillo, were listed as witnesses by the claimant and were present via telephone at the beginning of the hearing in this matter, however, the witnesses were required to return to work by the employer prior to testifying on behalf of the claimant. On July 27, 2015, the administrative law judge issued a decision affirming the adjudicator's decision that the claimant had been discharged from employment for job-related misconduct.

The claimant, Ms. Munguia, filed an appeal with the Employment Appeal Board on August 31, 2015. The Employment Appeal Board remanded the matter back to the unemployment insurance appeal bureau for the purpose of giving the claimant an opportunity to present the testimony of her two witnesses referencing the claimant's ability to compel testimony of the witnesses by subpoena, if necessary. The Employment Appeal Board did not vacate the administrative law judge decision of July 27, 2015 which affirmed the adjudicator's determination that the claimant had been separated from employment for disqualifying misconduct in connection with her work. The opportunity for the claimant to further develop the record by the inclusion of the testimony of the two witnesses was given to the claimant to afford her the opportunity to fully present her case.

Notices of hearing were mailed to the parties' last-known addresses of record for a telephone hearing to be held at 8:00 a.m. on September 17, 2015. A review of the Appeals Bureau's conference call system showed that the claimant/appellant failed to respond to the hearing notice and provide a telephone number at which the claimant or a representative could be reached for the hearing and did not participate in the hearing. Based upon the appellant's failure to participate in the hearing and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

**ISSUE:**

Should the reopening of the record in this matter be dismissed based upon the claimant/appellant not participating in the hearing?

**FINDINGS OF FACT:**

The claimant initially filed an appeal from a representative's decision that was dated June 15, 2015, reference 01, which disqualified the claimant from receiving unemployment insurance benefits. A telephone conference hearing was conducted on June 26, 2015 at which time both the claimant and the employer's witness provided testimony regarding the claimant's separation from her employment with Captive Plastics, Inc. A detailed administrative law judge decision was issued on July 27, 2015 affirming the adjudicator's decision that Ms. Munguia had been discharged from her employment under disqualifying conditions.

Based upon an appeal that had been filed by the claimant with the Employment Appeal Board, the matter was remanded for further development of the record, specifically to give the claimant an opportunity to have the testimony of her two witnesses included in the hearing record.

Notices of hearing were mailed to the parties' last-known addresses of record for a telephone hearing to be held at 8:00 a.m. on September 17, 2015. Ms. Munguia, the claimant/appellant failed to provide a telephone number at which she could be reached for the hearing and did not participate in the hearing or request a postponement as required by the hearing notice. The administrative law judge's decision dated July 27, 2015, had affirmed the adjudicator's decision dated June 15, 2015, reference 01, that found the claimant had been discharged for misconduct in connection with her work.

**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 Iowa Admin. Code r. 871-26.14(7) provide:

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.

The claimant/appellant appealed the representative's decision dated July 27, 2015 that affirmed the adjudicator's determination dated June 15, 2015, reference 01. Although duly notified of the time and date of the hearing and the manner that the hearing would be conducted, the claimant/appellant failed to participate in the reopening of the hearing record. The claimant/appellant has, therefore, defaulted on her to provide the sworn testimony of her two witnesses pursuant to Iowa Code § 17A.12(3) and Iowa Admin. Code r. 871-24.14(7), and the representative's decision remains in force and effect.

The administrative law judge has reviewed the administrative law judge decision dated July 27, 2015 that affirmed the disqualification decision of the adjudicator. The administrative law judge adopts the findings of fact, reasoning and conclusions of law of the July 27, 2015 administrative law judge decision. Based upon the claimant's failure to participate in the reopening of this matter, the administrative law judge decision dated July 27, 2015, shall remain in full force and effect.

If the appellant disagrees with this decision pursuant to the rule, 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.

**DECISION:**

The representative's unemployment insurance decision dated July 27, 2015, affirming the June 15, 2015, reference 01, adjudicator's decision that the claimant had been discharged under disqualifying conditions is affirmed. The decision denying benefits to the claimant based upon her separation from employment from Captive Plastics, Inc. shall remain in effect.

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Terence P. Nice  
Administrative Law Judge  
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Decision Dated and Mailed

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