

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

OLIVIA HOLLIS
Claimant

APPEAL NO. 15A-UI-11509-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 09/13/15
Claimant: Appellant (6)**

Iowa Code § 17A.12(3) - Default Decision
871 IAC 26.14(7) - Dismissal of Appeal on Default
871 IAC 26.14(7)b - Late Call
Iowa Code § 17A.12-3 - Non-Appearance of Party

STATEMENT OF THE CASE:

An appeal was filed from a representative's unemployment insurance decision dated October 2, 2015, (reference 06), that concluded the claimant/appellant was overpaid unemployment insurance benefits. Notice of hearing was mailed to the party's last-known address of record for a telephone hearing to be held at 8:05 a.m. on October 29, 2015. A review of the Appeals Bureau's conference call system indicates that the claimant/appellant was not available at the telephone number provided for the hearing so no hearing was held.

ISSUE:

The issue is whether the underlying decision should be affirmed and the appeal should be effectively dismissed based upon the claimant/appellant's failure to participate in the hearing.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. A Notice of Appeal and Hearing was mailed to the claimant/appellant on October 19, 2015. There is no evidence suggesting the claimant/appellant did not receive the hearing notice prior to the hearing scheduled on October 29, 2015.

The front page of the hearing notices states: **"The judge will not call you on the day of the hearing if you have not registered your phone number with the Appeals Bureau in Des Moines, Iowa as instructed below."** This information can be found on both the front and the back of the hearing notice. The hearing notice instructions further advise the parties, "If you do not participate in the hearing because you do not register for the hearing, register late, or cannot be reached at the number you provided when the judge calls for the hearing, the appeal may be dismissed or decided based on other available evidence."

The claimant/appellant received the hearing notice prior to the hearing scheduled on October 29, 2015, at 8:05 a.m. The notice specifically says "Iowa Time". The instructions

inform the parties that if the party does not contact the Appeals Section and provide the phone number at which the party can be contacted for the hearing, the party will not be called for the hearing. The claimant/appellant contacted the Appeals Bureau and provided a telephone number for the hearing. The claimant/appellant did not answer the telephone at the time of the hearing. The claimant/appellant contacted the Appeals Bureau on October 29, 2015, two hours after the scheduled start time for the hearing. The claimant/appellant did not read the hearing notice to see that the hearing would take place at 8:05 a.m. Iowa time, not in the time zone where the claimant/appellant was at the time of the hearing. Therefore, the claimant/appellant could not be reached for the hearing and no hearing was held.

The representative's decision concluded the claimant/appellant was overpaid 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 871 IAC 26.14(7) provides that if the appealing 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 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. 871 IAC 26.14(7)c.

The statute does not allow the record to be reopened without good cause. This claimant/appellant has not provided good cause for reopening the record. The statute prohibits this administrative law judge from reopening the record without good cause. The record shall not be reopened.

Consequently, the claimant/appellant has therefore defaulted on her appeal pursuant to Iowa Code § 17A.12(3) and 871 IAC 26.14(7), and the representative's decision remains in force and effect.

DECISION:

The representative's unemployment insurance decision dated October 2, 2015, (reference 06), is affirmed. The claimant/appellant was overpaid unemployment insurance benefits.

Beth A. Scheetz
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

Decision Dated and Mailed

bas/css