

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

FLORENCIO R ESPIRITO
Claimant

WEST LIBERTY FOODS LLC
Employer

APPEAL NO. 14A-UI-11543-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/12/14
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 29, 2014 (reference 01) that concluded Florencio Espirito (claimant/appellant) was not eligible for unemployment insurance benefits after a separation from employment from West Liberty Foods, LLC (employer/respondent). Notices of hearing were mailed to the parties' last-known addresses of record, for a telephone hearing to be held at 2:00 p.m. on December 1, 2014. The claimant/appellant did not participate in the scheduled hearing so no hearing was held.

ISSUE:

The issue is whether good cause has been established to reopen the record, and if not, 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. The claimant/appellant received the hearing notice prior to the hearing scheduled on December 1, 2014. The claimant/appellant failed to contact the Appeals Bureau to provide a telephone number at which he could be reached for the hearing so no hearing was held. 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 advises 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 and his wife Kimberly, who speaks English, called the Appeals Bureau after the scheduled hearing. Kimberly said she did not register their telephone number because

Iowa Workforce already has their number and their number was also on their appeal letter. The claimant/appellant failed to read and/or follow the hearing notice instructions and has not provided good cause for the failure to do so.

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. Likewise, 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).

This rule does not provide exceptions for good intentions and/or a party contacting the Appeals Bureau within a reasonable amount of time after the hearing is scheduled. It can be assumed an appellant intends to participate in the hearing simply by the fact an appeal is filed, but their responsibility does not end there and all parties are required to follow the specific written instructions printed on the hearing notice. Due process requires notice and an opportunity to be heard, both of which were provided to the parties.

If the claimant/appellant responds to the notice of hearing after the record has been closed, the administrative law judge shall not take the evidence of the late party. Instead, the administrative law judge shall inquire ex parte as to why the party was late in responding to the notice of hearing. For good cause shown, the record shall be reopened and cause further notice of hearing to be issued. The record shall not be reopened without a finding of good cause for the party's late response to the notice of hearing. 871 IAC 26.14(7)b. Furthermore, the rule states that failure to read or follow the hearing notice instructions shall not constitute good cause. 871 IAC 26.14(7)c.

In the case herein, the claimant/appellant has failed to establish the requisite good cause required to reopen the hearing record. Consequently, the claimant/appellant has therefore defaulted on his appeal pursuant to Iowa Code § 17A.12(3) and 871 IAC 26.14(7), and the representative's decision remains in full force and effect.

DECISION:

The representative's unemployment insurance decision dated October 29, 2014 (reference 01) is affirmed. The decision denying benefits remains in effect.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/can