

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

JASMINE D JACKSON
Claimant

APPEAL NO: 17A-UI-02919-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLAZIN WINGS INC
Employer

OC: 02/12/17
Claimant: Appellant (6)

Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

Jasmine Jackson filed an appeal from the March 8, 2017, reference 03, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Ms. Jackson was discharged on February 8, 2017 for excessive unexcused absenteeism and tardiness after being warned. A notice of hearing was mailed to the parties' last-known addresses of record for a telephone hearing to be held at 11:00 a.m. on April 7, 2017. The employer registered telephone numbers for the hearing and was available for hearing through Jackie Boudreaux of ADP and Stacy Chapman of Blazin Wings, Inc. Ms. Jackson also registered a telephone number for the hearing. Ms. Jackson was initially present for the hearing, but voluntarily terminated her participation in the hearing prior to the conclusion of the opening statement. The hearing in this matter was consolidated with the hearing in Appeal Number 17A-UI-02920-JTT. Based upon the claimant/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 appeal be dismissed based upon the claimant/appellant not participating in the hearing?

FINDINGS OF FACT:

Claimant Jasmine Jackson is the appellant in this matter and a companion appeal. On March 16, 2017, the Appeals Bureau mailed a hearing notice to Ms. Jackson at her address of record to provide proper notice of the consolidated appeal hearing set for 11:00 a.m. on April 7, 2017. On March 22, 2017, the Appeals Bureau received the mailed notice back from the United States Postal Service with a note attached indicating that the notice could not be delivered as addressed. On March 24, 2017, the Appeal Bureau emailed a second copy of the hearing notice to Ms. Jackson's email address of record. At 10:58 a.m. on April 7, 2017, Ms. Jackson complied with the hearing notice instructions to register a telephone number for the hearing. Ms. Jackson telephoned the Appeals Bureau at that time and provided a telephone number where she could be reached for the hearing. The employer had also registered a telephone number for the hearing and was available through Jackie Boudreaux of ADP and Stacy Chapman of Blazin Wings, Inc. At the time of the hearing, the administrative law judge contacted Ms. Jackson, the employer and the employer representative for the hearing.

Ms. Jackson was initially available for the hearing. Ms. Jackson was on a cell phone. Ms. Jackson indicated that she was a passenger in a moving vehicle. There was an excessive amount of loud background noise coming from Ms. Jackson's end of the line. The background noise sounded like a bulldozer or some other piece of heavy equipment. Due to the excessive noise coming from Ms. Jackson's end of the conference call, the administrative law judge was unable to provide the opening statement the law requires. Because Ms. Jackson represented that she was in a moving vehicle, the administrative law judge advised Ms. Jackson that she would need to pull over and move to a quieter area so that the hearing could go forward. At that time, Ms. Jackson asked whether the hearing could be rescheduled. Ms. Jackson did not provide any reason for that request. When the administrative law judge denied the last-minute reschedule request and pointed out that the hearing notice had been issued on March 16, 2017 to provide Ms. Jackson with sufficient time to make appropriate arrangements to participate in the hearing. At that point, 11:08 a.m., Ms. Jackson voluntarily and abruptly terminated her participation in the hearing. The administrative law judge called Ms. Jackson back in an effort to reconnect her to the hearing. When Ms. Jackson did not answer, the administrative law judge left a voice mail message for Ms. Jackson. The administrative law judge left the hearing record open until 11:16 a.m., at which point the administrative law judge closed the hearing record and dismissed the employer and employer representative from the hearing. As of the entry on this decision, the administrative law judge has not heard further from Ms. Jackson.

The March 8, 2017, reference 03, decision disqualified Ms. Jackson for benefits and relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Ms. Jackson was discharged on February 8, 2017 for excessive unexcused absenteeism and tardiness after being warned.

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 but failed to participate in the hearing. The claimant/appellant has therefore defaulted on her appeal 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.

If the claimant/appellant disagrees with this decision, pursuant to the rule, the claimant/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 claimant/appellant from participating in the hearing at its scheduled time.

DECISION:

The March 8, 2017, reference 03, decision is affirmed. The decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that the claimant was discharged on February 8, 2017 for excessive unexcused absenteeism and tardiness after being warned, remains in effect.

James E. Timberland
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

jet/rvs