

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JERRALD R SETRAN
Claimant

APPEAL NO: 19A-UI-08191-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

A RAYMOND PLUMBING INC
Employer

**OC: 09/08/19
Claimant: Appellant (6)**

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(6) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

Jerrald Setran filed a timely appeal from the October 10, 2019, reference 02, decision that disqualified him for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that Mr. Setran voluntarily quit on August 21, 2019 without good cause attributable to the employer. Mr. Setran requested an in-person hearing. A notice of hearing was mailed to the parties' last-known addresses of record for in-person hearing to be held at the Council Bluffs IowaWORKS center at 10:30 a.m. on December 18, 2019. Andrew Raymond appeared for the hearing on behalf of the employer. The claimant/appellant, Mr. Setran, did not appear for the hearing. 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 Jerrald Setran is the appellant in this matter. Mr. Setran requested an in-person hearing. Mr. Setran was properly notified of the in-person appeal hearing set for 10:30 a.m. on December 18, 2019 at the Council Bluffs IowaWORKS center. The hearing notice was mailed to Mr. Setran's last-known address of record on December 3, 2019. Mr. Setran failed to appear for the hearing he requested. Andrew Raymond appeared on behalf of the employer. At the scheduled time of the appeal hearing, the administrative law judge called for Mr. Setran in the lobby of the IowaWORKS center, but Mr. Setran was not there. The administrative law judge had the employer stand by until 10:47 a.m. to give Mr. Setran additional opportunity to appear for and participate in the appeal hearing. Before closing the hearing record and dismissing the employer at 10:47 a.m., the administrative law judge made another call for Mr. Setran in the lobby of the IowaWORKS center, but Mr. Setran was not there. At the time of both calls for Mr. Setran, the administrative law judge conferred with the employer regarding whether the

employer had observed Mr. Setran enter the IowaWORKS center. At the time of both calls for Mr. Setran, the administrative law judge conferred with the IowaWORKS center staff regarding whether they had observed Mr. Setran enter the IowaWORKS center. In both instances, the employer and the staff confirmed Mr. Setran had not appeared at the center. From the 10:30 a.m. scheduled start of the hearing until 11:25 a.m., the administrative law judge worked in the hearing room, but had a clear view of the entry to the IowaWORKS suite. At no time did Mr. Setran appear for the hearing he had requested. Mr. Setran did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The appeal hearing was originally set for in-person appeal hearing at 10:30 a.m. on December 19, 2019 at the Council Bluffs IowaWORKS center. On November 27, 2019, the employer filed a timely request to reschedule the hearing and provided good cause to move the hearing from December 19, 2019. The administrative law judge granted the employer's request to reschedule the hearing and moved the hearing forward one day. As mentioned above, the hearing notice that contained the rescheduled hearing date, time and location was mailed to Mr. Setran in a timely manner on December 3, 2019.

The October 10, 2019, reference 02, decision disqualified Mr. Setran for benefits and held the employer's account would not be charged for benefits, based on the deputy's conclusion that Mr. Setran voluntarily quit on August 21, 2019 without good cause attributable to the employer.

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.

Iowa Administrative Code rule 871-26.14(6) provides:

26.14(6) In the event that one or more parties which have received notice for a contested case hearing fail to appear at the time and place of an in-person hearing, the presiding officer may proceed with the hearing. If the appealing party fails to appear, the presiding officer may decide the party is in default and dismiss the appeal. The hearing 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 arrives for an in-person hearing while the hearing is in session, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If an absent party arrives for an in-person hearing after the record has been closed and after any party which had participated in the hearing has departed, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire ex parte as to the reason the party was late. For good cause shown,

the presiding officer shall cause notice of hearing to be issued to all parties of record and reopen the record. The record shall not be reopened if the presiding officer does not find a good cause for the party's late arrival.

Iowa Administrative Code rule 871-26.8(4) provides:

(4) A request to reopen a record or vacate a decision must be made in writing. If necessary, the presiding officer may hear, ex parte, additional information regarding the request for reopening. The granting or denial of such a request may be used as grounds for appeal to the employment appeal board of the department of inspections and appeals upon the issuance of the presiding officer's final decision in the case.

The claimant/appellant appealed the representative's decision, but failed to participate in the hearing. The claimant/appellant has therefore defaulted on his appeal pursuant to Iowa Code §17A.12(3) and Iowa Admin. Code r. 871-24.14(6), 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 good cause that prevented the claimant/appellant from participating in the hearing at its scheduled time.

DECISION:

The claimant defaulted on his appeal. The appeal is dismissed. The October 10, 2019, reference 02, decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on August 21, 2019 without good cause attributable to the employer, remains in effect.

James E. Timberland
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Decision Dated and Mailed

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