

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENETTE CRESPO
Claimant

APPEAL NO: 14A-UI-06353-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES INC
Employer

OC: 05/25/14
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:

Jenette Crespo filed a timely appeal from the June 17, 2014, reference 03, unemployment insurance decision that denied benefits effective May 25, 2014, based on an agency conclusion that she was unable to work due to surgery. Notices of hearing were mailed to the parties' last-known addresses of record for a telephone hearing to be held at 9:05 a.m. on July 14, 2014. The hearing in this matter was consolidated with the hearing in Appeal Number 14A-UI-06352-JTT. The employer was available through Lori Smith. A review of the Appeals Bureau's conference call system indicates that the claimant/appellant failed to respond to the hearing notice and provide a telephone number at which she could be reached 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?

Is there good cause to reopen the hearing record in light of the claimant's late call?

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The claimant/appellant, Jenette Crespo, failed to provide a telephone number at which she could be reached for the hearing. Ms. Crespo did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The June 17, 2014, reference 03, unemployment insurance decision denied benefits effective May 25, 2014, based on an agency conclusion that Ms. Crespo was unable to work due to surgery.

The claimant contacted the Appeals Section 9:43 a.m. for the consolidated hearing that had been set for 9:05 a.m. The claimant had received proper notice of the hearing, but forgot to provide a telephone number for the hearing pursuant to the hearing notice instructions. The administrative law judge had closed the record and dismissed the employer witness at 9:16 a.m.

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.

Pursuant to the black letter law set forth at Iowa Admin. Code r. 871-24.14(7)(c), Ms. Crespo's failure to read and follow the instructions on the notice of the hearing specifically does not constitute good cause to reopen the hearing record.

DECISION:

The claims deputy's June 17, 2014, reference 03, unemployment insurance decision is affirmed. The decision that denied benefits effective May 25, 2014, based on an agency conclusion that the claimant was unable to work due to surgery remains in effect. The claimant failed to provide good cause to reopen the hearing record.

James E. Timberland
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Decision Dated and Mailed

jet/pjs