

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**FREDERICK M McCULLER**  
Claimant

**APPEAL NO: 16A-UI-04484-JT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EXPRESS SERVICES INC**  
Employer

**OC: 02/28/16**  
**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:**

Frederick McCuller filed a late appeal from the April 1, 2016, reference 02, decision that denied benefits effective February 28, 2016, based on an Agency conclusion that he was unable to work due to injury. Mr. McCuller requested an in-person hearing. A notice of hearing was mailed to the parties' last-known addresses of record, for an in-person hearing to be held at 11:00 a.m. on May 6, 2016 at 150 Des Moines Street in Des Moines, Iowa. Neither party appeared 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 Frederick McCuller is the appellant in this matter. Mr. McCuller requested an in-person hearing. On April 25, 2016, the Appeals Bureau mailed a hearing notice to the parties at their last-known addresses of record. The hearing notice provided the time and location for the in-person hearing: Friday, May 6, 2016 at 11:00 a.m. at 153 Des Moines Street in Des Moines, Iowa. The administrative law judge waited at the Workforce Development administrative building until 12:04 p.m. in case for one or both parties to appear for the hearing but neither appeared for the hearing. Neither party participated in the hearing or requested postponement of the hearing. The administrative law judge notes that the employer registered a telephone number on the Clear 2 There website but that did not constitute appearance for the scheduled in-person hearing.

The April 1, 2016, reference 02, decision denied benefits effective February 28, 2016, based on an Agency conclusion that Mr. McCuller was unable to work due to injury. The decision carried an April 11, 2016 appeal deadline. The appeal appears to have been hand-delivered to Workforce Development on April 14, 2016.

## **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 as follows:

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.

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(7), and the representative's decision remains in full 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 April 1, 2016, reference 02, decision is affirmed. The decision that denied benefits effective February 28, 2016, based on an Agency conclusion that the claimant was unable to work due to injury, remains in effect.

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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

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Decision Dated and Mailed

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