

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BRUCE E LANIER
Claimant

GLAZER WHOLESALE DISTRIBUTORS
Employer

APPEAL 14A-UI-13292-KCT
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 11/30/14
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:

The claimant filed an appeal from the December 17, 2014, (reference 01) unemployment insurance decision that concluded claimant was ineligible for unemployment insurance benefits after a separation from employment. Notices of hearing were mailed to the parties' last-known addresses of record for a telephone hearing scheduled for January 22, 2015. A review of the Appeals Bureau's conference call system indicates that the claimant provided a telephone number in response to the hearing notice. When the undersigned administrative law judge called the claimant at approximately 3:00 p.m., the claimant indicated that he was riding in a car with his family and using a cell phone for the hearing. The administrative law judge asked if he could go to a private place to participate in the hearing. He said he could not.

During the early part of the call, and while the employer's representative and witness were present on the call, a busy signal became audible and the claimant was no longer available. The employer's representative and witness confirmed their presence on the call. The administrative law judge told the employer's representative and witness that she would attempt to reach the claimant and if a message could be left on the cell phone, the claimant would have 15 minutes to call back and resume the hearing. The employer's representative and witness were advised to stay available on their listed phone numbers until 3:25 p.m. or approximately 25 minutes after the hearing started.

After the claimant's connection was broken, as demonstrated by the busy signal, the administrative law judge made two calls to the claimant's listed phone number and left messages. On the first message left at 3:08 p.m., the claimant was advised to return the call to 1 800 532-1483, the number listed on the Notice of Appeal and Hearing, if he wished to participate in the hearing. He was advised to ask for Judge Collinson and to make the return call in the following 15 minutes or by approximately 3:25 p.m. on that date. The claimant did not return the call. The undersigned left a second message for the claimant at approximately 3:25 p.m. The claimant was advised that because he had not returned the call, there was inadequate time remaining during the time allotted for the hearing for both sides to present their evidence and the record was closed. As of 4:35 p.m. on the day of the hearing, the claimant had not made contact with the Iowa Workforce Development Employment Appeals Bureau.

ISSUE:

Should the appeal be dismissed based on the appellant's failure to appear and participate?

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing for this appeal. The appellant was not available consistently at the telephone number provided for the scheduled hearing. He was aware of the hearing date and time. The claimant provided a telephone (cell-phone) number that he chose to use while driving with his family. The claimant became inaccessible for the hearing shortly after the telephonic hearing began and did not make contact thereafter.

As a *courtesy* to the appellant the record was left open for a minimum of 15 minutes after the hearing start time to give the appellant a *reasonable* opportunity to participate. This reasonable amount of time is appropriate because if a hearing were conducted with the non-appealing party alone it would have likely concluded in 15 minutes or less. Allowing additional time would prejudice the non-appealing party for appearing in a timely manner. The 15-minute wait time is also a reasonable period to hold the record open as insufficient time would remain to conduct a quality due process hearing in the time allotted by the Appeals Bureau. Each two-party hearing is allowed 60 minutes and a one-party hearing allowed 30 minutes. Holding the appellant in default for failure to appear and participate during a 15-minute window after the hearing start time is entirely reasonable considering the time allocated for unemployment hearings.

The representative's decision had concluded that the claimant was ineligible for unemployment insurance benefits.

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. 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 § 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 Iowa Supreme Court has opined that a default should not be set aside for ordinary negligence or want of ordinary care. Defaults should not be set aside where the movant ignores plain mandates with ample opportunity to abide. See *Houlihan v. Emp't Appeal Bd.*, 545 N.W.2d 863 (Iowa 1996). Here the plain and simple mandate is to read the hearing notice and register a telephone number where the party can be reached for the hearing. The second simple and obvious mandate is to be available at the number provided at the date and time of the hearing. Further, if the party misses or does not receive the hearing call, the party has telephone numbers on the hearing notice at which inquire. Due process requires notice and an opportunity to be heard, both of which were provided to the parties. *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. The appellant filed the appeal and is held solely responsible for going forward with the case in an expeditious and deliberate manner. The rule holds appellant in default if not present *at the start* of hearing. As a *courtesy*, appellant was granted additional time not required by statute or rule. Here, notwithstanding additional time, notice and opportunity, the appellant failed to prosecute the case promptly and as such the appellant is in default and the appeal shall be dismissed. Iowa Code § 17A.12(3) and Iowa Admin. Code r. 24.14(7). The representative's decision remains in force and effect.

Pursuant to the rule, the 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 appellant from participating in the hearing at its scheduled time. The appellant also has the option to appeal the decision directly to the Employment Appeal Board, whose address is listed at the top right caption.

DECISION:

The December 17, 2014 (reference 01) unemployment insurance decision denying benefits remains in effect as the appellant is in default and the appeal is dismissed.

Kristin A. Collinson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-242-5144

Decision Dated and Mailed

kac/pjs