

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MIKE S NEWTON
Claimant

APPEAL NO: 18A-UI-04088-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

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

Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default
Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Code § 96.16(4) – Offenses and Misrepresentation
Iowa Admin. Code r. 871-25.1 – Misrepresentation & Fraud

STATEMENT OF THE CASE:

The claimant/appellant, Mike S. Newton, filed an appeal from the March 22, 2018 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision which concluded the claimant was overpaid unemployment insurance benefits because the claimant incorrectly reported, or failed to report, earnings when also filing a claim for unemployment insurance benefits. IWD also imposed a 15% administrative penalty due to misrepresentation.

Notice of the hearing was mailed to the claimant’s last known address of record for a telephone hearing to be held at 9:00 a.m. on April 26, 2018. A review of the Appeals Bureau’s conference call system after 9:30 a.m. the same day shows the claimant/appellant failed to respond to the hearing notice instruction and provide a telephone number at which he could be reached for the scheduled hearing, and no hearing was held.

ISSUE:

Should the appeal be dismissed based upon the claimant/appellant not being available to participate in the scheduled hearing?

FINDINGS OF FACT:

The claimant/appellant was properly notified of the scheduled hearing on this appeal. The claimant/appellant, Mike S. Newton, failed to respond to the hearing notice instruction and provide a telephone number at which he could be reached, nor did he request a postponement of the hearing as required by the hearing notice.

The hearing notice instruction specifically advised the claimant:

Date: THU APR 26, 2018
Iowa Time: 9:00 a.m.

You must register for the hearing immediately!

You must register your phone number and the name(s) and phone number(s) of any witness(es) with the Appeals Bureau. If you do not register, the judge will not be able to call you or your witness(es) for the hearing.

The agency's decision concluded that the claimant was overpaid unemployment insurance benefits and imposed a 15% penalty due to misrepresentation.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedure Act at Iowa Code § 17A.12(3) provides that if a party fails to appear or participate in a hearing after proper service of notice, the judge may enter a default decision or proceed with the hearing and make a decision in the absence of the party. The statute further states that if a party makes a timely request to vacate the decision and shows good cause for failing to appear, the judge shall vacate the decision and conduct another hearing.

Agency rule Iowa Admin. Code r. 871-26.14(7) provides that if the appealing 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 judge 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 and shows good cause for reopening the hearing. The rule further states that *failure to read or follow the instructions on the notice of hearing is not good cause for reopening the record*. Iowa Admin. Code r. 871-26.14(7)c. (Emphasis added.)

The claimant/appellant, Mike S. Newton, appealed the unemployment insurance decision but failed to be available to participate in the scheduled 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 decision remains in force and effect.

If the appellant disagrees with this decision, a written request to reopen the record must be made to the administrative law judge within 15 days after the mailing date of this decision. The 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 the scheduled time.

DECISION:

The appellant is in default and the appeal is dismissed. The unemployment insurance decision dated March 22, 2018, (reference 01) denying benefits remains in effect. The claimant has been overpaid benefits and the 15% penalty due to misrepresentation remains in effect.

Jennifer L. Beckman
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

jlb/scn