

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ORETHA KARMA
Claimant

SWIFT PORK COMPANY
Employer

APPEAL 16R-UI-13833-DG-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/18/16
Claimant: Respondent (2)**

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 employer filed an appeal from the October 12, 2016, (reference 01) unemployment insurance decision that allowed benefits. A hearing in this matter was originally held on November 7, 2016. The employer appeared at the hearing the claimant did not call in or register for the hearing and did not participate. A decision was issued on that same date that reversed the fact-finder's decision and held claimant was not able to and available for work, and further held that the claimant had been overpaid benefits. Claimant appealed that decision to the Employment Appeal Board. The Board remanded the case back to the appeals section, but did not vacate the appeal judge's decision. Claimant's address of record has been as stated above during the entire claim process thus far. Claimant received the fact-finding interview notice at that address of record and participated. At each stage of the appeal process thereafter claimant claims not to have received the notice. Non-receipt of the notice for the two hearings scheduled after the fact-finding interview is not credible. Claimant has a duty to regularly and frequently retrieve her mail at her post office box and cannot now claim non-receipt. After the Employment Appeal Board (EAB) remanded, due notice was issued, a hearing was scheduled to be held on February 2, 2017. The claimant did not respond to the hearing notice. The employer did not respond to the hearing notice and did not participate. Because the EAB did not vacate the original appeal decision 16A-UI-11497-DG-T, that hearing record, including any exhibits, is adopted and incorporated herein. No additional exhibits were offered.

ISSUE:

Should the original appeal decision be adopted?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Inasmuch as the decision was not vacated as a result of the Employment Appeal Board remand, the administrative law judge's findings of fact in appeal 16A-UI-11497-DG-T is hereby adopted and incorporated herein as the findings of fact for appeal 16R-UI-13833-DG-T.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the employer's request to reopen the hearing should be granted or denied.

Iowa Admin. Code r. 871-26.14(7) provides:

(7) 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 provide 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 did not respond to the hearing notice and provide a telephone number at which the appellant could be reached for the hearing. Although the claimant may have intended to participate in the hearing, the claimant's forgetfulness or negligence in failing to read or follow the hearing notice instructions does not constitute good cause to reopen the hearing. Therefore, the claimant's request to reopen the hearing is denied.

For the reasons that follow, the administrative law judge concludes that inasmuch as the decision was not vacated as a result of the Employment Appeal Board remand, the administrative law judge's reasoning and conclusions of law in appeal 16A-UI-11497-DG-T is hereby adopted and incorporated herein as the reasoning and conclusions of law for appeal 16R-UI-13833-DG-T.

DECISION:

Inasmuch as the decision was not vacated as a result of the Employment Appeal Board remand, the administrative law judge's decision in appeal 16A-UI-11497-DG-T is hereby adopted and incorporated herein as the decision for appeal 16R-UI-13833-DG-T. The claimant is not able to work and available for work effective September 18, 2016. Benefits are withheld until such time as the claimant obtains a full medical release to return to work, offers her

services to the employer, and no suitable, comparable work is available considering reasonable accommodation; or if she is involuntarily separated before that time. The claimant has been overpaid unemployment insurance benefits in the amount of \$381.00 and is obligated to repay the agency those benefits. The employer did participate in the fact-finding interview and its account shall not be charged.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/rvs