

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

OLIVER A MORRIS
Claimant

APPEAL NO: 14A-UI-06957-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**DES MOINES REGIONAL TRANSIT
AUTHORITY**
Employer

OC: 06/16/13
Claimant: Appellant (6)

Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default
Iowa Admin. Code r. 871-26.14(7)(c) – Absence of Good Cause to Reopen Hearing Record

STATEMENT OF THE CASE:

Oliver Morris filed an appeal from the June 26, 2014, reference 03, unemployment insurance decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that he had been discharged on June 6, 2014 for violation of a known company rule. Notices of hearing were mailed to the parties' last-known addresses of record, for a telephone hearing to be held at 8:00 a.m. on July 31, 2014. The hearing in this matter was consolidated with the hearing in Appeal No. 14A-UI-06958-JTT. 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 he could be reached for the hearing. The employer was available through Steve Hansen and Randy McKern. 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.

After the hearing record closed and the employer had been dismissed from the hearing, the claimant made a late call to the Appeals Section. The claimant did not provide good cause to reopen the hearing record.

ISSUE:

Should the appeal be dismissed based upon the claimant/appellant not participating in the hearing?

Did the claimant provide good cause to reopen the hearing record?

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The claimant/appellant, Oliver Morris, failed to provide a telephone number at which he could be reached for the hearing. Mr. Morris did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. A separate hearing notice had been mailed to Mr. Morris concerning the companion case. Mr. Morris did not respond to either notice.

The June 26, 2014, reference 03, unemployment insurance decision disqualified Mr. Morris for benefits and relieved the employer of liability for benefits, based on an Agency conclusion that he had been discharged on June 6, 2014 for violation of a known company rule.

On July 31, 2014 the administrative law judge left the hearing record open until 8:15 a.m. to give the claimant additional opportunity to make himself available for, and participate in, the appeal hearing. When the claimant did not do that, the administrative law judge closed the hearing record and dismissed the employer. The claimant contacted the Appeals Section at 8:38 a.m. The administrative law judge immediately returned the claimant's call. The claimant acknowledged having received appropriate notice of the hearing. The claimant advised that the only basis for his absence from the hearing was his failure to read and follow the hearing notice instructions that directed him to provide a telephone number for the hearing.

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 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.

Pursuant to Iowa Admin. Code r. 871-26.14(7)(c), Mr. Morris' failure to read and follow the hearing notice instructions to provide a telephone number for the hearing is specifically not good cause to reopen the hearing record. Based on the black letter law, the administrative law judge concludes that Mr. Morris has not provided good cause to reopen the hearing record.

DECISION:

The Claims Deputy's June 26, 2014, reference 03, unemployment insurance decision is affirmed. The decision that disqualified the claimant for benefits, and that relieved the employer of liability for benefits, remains in effect. The claimant did not provide good cause to reopen the hearing record.

James E. Timberland
Administrative Law Judge
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Decision Dated and Mailed

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