

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

BRIANNA CALHOUN
Claimant

APPEAL NO: 18A-UI-12453-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALMART INC
Employer

OC: 12/02/18
Claimant: Respondent (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 employer filed an appeal from the December 21, 2018 reference 01, decision that held the claimant was eligible for benefits provided she met all other eligibility requirements and that the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on December 4, 2018 for no disqualifying reason. A notice of hearing was mailed to the parties' last-known addresses of record for a telephone hearing to be held at 1:00 p.m. on January 16, 2019. The claimant registered a telephone number for the hearing and was available for the hearing. The employer registered a telephone number for the hearing, but the employer representative, Abdishakur Ibrahim, was not available at the registered number at the time of hearing and did not participate in the hearing. Based upon the employer/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 employer/appellant not participating in the hearing?

FINDINGS OF FACT:

The employer is the appellant in this matter. The employer was properly notified of the appeal hearing set for 1:00 p.m. on January 16, 2019 through the hearing notice that was mailed to the employer's last-known address of record on January 3, 2019. At 11:26 a.m. on January 16, 2019, the employer or the employer's third-party representative, Equifax/Talx, registered a telephone number for the 1:00 p.m. hearing and named Abdishakur Ibrahim as the employer's representative at the hearing. When the employer registered a telephone number at the Clear2There website, the employer included instructions directing the administrative law judge to dial zero to reach the operator at the registered number. The employer was not available at the telephone number provided for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. At the scheduled start of the appeal hearing, administrative law judge made three attempts to reach Abdishakur Ibrahim at the number the employer registered for the hearing. On each attempt, the administrative law judge dialed zero and spoke with the store operator. On the first attempt, the store operator placed the administrative law judge on hold. The administrative law judge remained on hold for

an extended period. When no one came back on the line, the administrative law judge disconnected the call and immediately made a second attempt to reach Mr. Ibrahim for the hearing. The administrative law judge again spoke with the store operator. The store operator advised that she had told Mr. Ibrahim at the time of the first call that the administrative judge was waiting on hold. The administrative law judge provided the store operator with the administrative law judge's name and the toll-free phone number for the Appeals Bureau. The administrative law judge advised the store operator that if Mr. Ibrahim did not come to the phone on this second attempt, he would need to contact the Appeals Bureau no later than 1:15 p.m. to indicate he was available for the appeal hearing or the administrative law judge would close the hearing record at that time. Though the operator told the administrative law judge that she would place the administrative law judge on hold, the operator instead accidentally terminated the second call. The administrative law judge immediately made a third attempt to reach Mr. Ibrahim for the appeal hearing and again spoke to the store operator. The store operator again placed the administrative law judge on hold. The administrative law judge remained on hold for an extended period. When no one returned to the line, the administrative law judge terminated the call to the employer. The administrative law judge spent nine consecutive minutes trying to get the employer on the phone for the hearing. At 1:15 p.m., when the employer representative had still not made himself available for the appeal hearing, the administrative law judge closed the hearing record and dismissed the claimant.

The December 21, 2018 reference 01, decision held the claimant was eligible for benefits provided she met all other eligibility requirements and that the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on December 4, 2018 for no disqualifying reason.

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(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 in writing 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.
- c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

Iowa Administrative Code rule 871-26.8(4) provides:

- (4) A request to reopen a record or vacate a decision must be made in writing. If necessary, the presiding officer may hear, ex parte, additional information regarding the request for reopening. The granting or denial of such a request may be used as grounds for appeal to the employment appeal board of the department of inspections and appeals upon the issuance of the presiding officer's final decision in the case.

The employer/appellant appealed the representative's decision but failed to participate in the hearing. The employer/appellant has therefore defaulted on its appeal pursuant to Iowa Code §17A.12(3) and Iowa Admin. Code r. 871-24.14(7), and the representative's decision remains in force and effect.

If the employer/appellant disagrees with this decision, pursuant to the rule, the employer/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 good cause that prevented the employer/appellant from participating in the hearing at its scheduled time.

DECISION:

The December 21, 2018 reference 01, decision is affirmed. The decision that held the claimant was eligible for benefits provided she met all other eligibility requirements and that the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on December 4, 2018 for no disqualifying reason, remains in effect.

James E. Timberland
Administrative Law Judge
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Decision Dated and Mailed

jet/rvs