

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

QUALESE BROWN
Claimant

APPEAL NO: 19A-UI-00635-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 12/30/18
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:

Qualese Brown filed a timely appeal from the January 18, 2019, reference 01, decision that held he was disqualified for benefits and the employer's account would not be charged for benefits, based on the deputy's conclusion that Mr. Brown was discharged on December 11, 2018 for violation of a known company rule. 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 February 7, 2019. The employer registered a telephone number for the hearing and was available through representative Jennifer Rice of Corporate Cost Control and witnesses Tony Baccam and Dan Anderson. The claimant/appellant, Mr. Brown, registered a telephone number for the hearing, but was not available at that number at the time of the hearing. 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.

ISSUE:

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

FINDINGS OF FACT:

Claimant Qualese Brown is the appellant in this matter. Mr. Brown was properly notified of the appeal hearing set for 1:00 p.m. on February 7, 2019 through the hearing notice that was mailed to his last-known address of record on January 28, 2019. At 10:14 a.m. on February 7, Mr. Brown contacted the Appeals Bureau and spoke with a clerk to register a telephone number for the appeal hearing. At that time, the clerk told Mr. Brown that if he did not hear from the administrative law judge by 1:05 p.m., he should call the Appeals Bureau at that time regarding the hearing. A short while after Mr. Brown registered a telephone number for hearing, he called the Appeals Bureau, spoke to a different clerk, and told the clerk that he wanted to withdraw his appeal. The clerk instructed Mr. Brown to submit a written request to withdraw the appeal. The Appeals Bureau did not receive a written request to withdraw the appeal. At the time of the hearing, the administrative law judge made two attempts to reach Mr. Brown for the hearing. On each attempt, Mr. Brown did not answer and the administrative law judge was routed to an

answering system that stated voicemail for the number had not been set up. For that reason, the administrative law judge was unable to leave a message for Mr. Brown. The administrative law judge had the employer representative and witnesses stand by. The administrative law judge alerted the clerks that the administrative law judge had been unable to reach Mr. Brown for the hearing. It was at this time that the clerks advised the administrative law judge of Mr. Brown's second call and his statement to one of the clerks that he wished to withdraw the appeal. Mr. Brown did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The January 18, 2019, reference 01, decision that that Mr. Brown was disqualified for benefits and the employer's account would not be charged for benefits, based on the deputy's conclusion that Mr. Brown was discharged on December 11, 2018 for violation of a known company rule.

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 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 force and effect.

If the claimant/appellant disagrees with this decision, pursuant to the rule, the claimant/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 claimant/appellant from participating in the hearing at its scheduled time.

DECISION:

The January 18, 2019, reference 01, decision is affirmed. The decision that held the claimant was disqualified for benefits and the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant was discharged on December 11, 2018 for violation of a known company rule, remains in effect.

James E. Timberland
Administrative Law Judge
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Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
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Decision Dated and Mailed

jet/rvs