

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ZACHARY E WHEELER**  
Claimant

**APPEAL NO: 14A-UI-12251-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SEARS MANUFACTURING CO**  
Employer

**OC: 10/05/14**  
**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:**

Zachary Wheeler filed a late appeal from the October 23, 2014, reference 01, unemployment insurance decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that he was discharged on September 26, 2014 for misconduct in connection with the employment. Notices of hearing were mailed to the parties' last-known addresses of record for a telephone hearing to be held at 9:00 a.m. on December 16, 2014. A review of the Appeals Bureau's conference call system indicates that the claimant/appellant failed to respond to the hearing notice instructions to provide a telephone number at which he could be reached for the hearing. The employer was available through Dina Smith of Employers Edge and Trisha Taylor of Sears Manufacturing Company. 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 representative and employer witness were dismissed from the hearing, Mr. Wheeler contacted the Appeals Section at 10:49 a.m. for the 9:00 a.m. hearing. Mr. Wheeler did not provide good cause to reopen the hearing record.

**ISSUES:**

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

Whether the claimant's failure to read and follow the hearing notice instructions to provide a telephone number for the hearing provides good cause to reopen the hearing record.

**FINDINGS OF FACT:**

Zachary Wheeler is the appealing party in this matter. The appeal hearing was set for Tuesday, December 16, 2014 at 9:00 a.m. A hearing notice was mailed to Mr. Wheeler on November 3, 2014. Mr. Wheeler received timely and appropriate notice of the hearing. The hearing notice instructed Mr. Wheeler to immediately follow the hearing notice instructions to provide a telephone number where he could be reached for the hearing. The hearing notice warned

Mr. Wheeler that the administrative law judge would not contacted him for the hearing if he failed to follow the hearing notice instructions to provide a telephone number where he could be reached for the hearing. Mr. Wheeler did not read or follow the hearing notice instructions to provide a telephone number for the hearing. When Mr. Wheeler did not appear for the hearing, the administrative law judge closed the hearing record and dismissed the employer representative and employer witness at 9:15 a.m.

At 10:49 a.m. on December 16, 2014, Mr. Wheeler contacted the Appeals Section regarding the 9:00 a.m. hearing. The administrative law judge called Mr. Wheeler back at 11:25 a.m. At that time, Mr. Wheeler confirmed receipt of proper notice of the hearing and that he did not read or follow the hearing notice instructions to provide a telephone number for the hearing. The administrative law judge confirmed Mr. Wheeler's address and advised him of his appeal rights.

The October 23, 2014, reference 01, unemployment insurance decision disqualified Mr. Wheeler for benefits and relieved the employer of liability for benefits, based on an Agency conclusion that he was discharged on September 26, 2014 for misconduct in connection with the employment.

#### **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) provides:

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 § 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.

Mr. Wheeler appealed the representative's decision, but failed to participate in the appeal hearing as scheduled. Pursuant to Iowa Administrative Code rule 871-26.14(7)(c), Mr. Wheeler's failure to read and follow the hearing notice instructions to provide a telephone number for the hearing are specifically not good cause for reopening the record. Mr. Wheeler defaulted on his appeal pursuant to Iowa Code § 17A.12(3) and Iowa Admin. Code r. 871-24.14(7), and the claims deputy's decision remains in force and effect.

**DECISION:**

The October 23, 2014, reference 01, unemployment insurance decision is affirmed. The decision that disqualified the claimant for benefits and that relieved the employer of liability for benefits based on the September 26, 2014 discharge remains in effect.

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James E. Timberland  
Administrative Law Judge  
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Decision Dated and Mailed

jet/css