

IOWA DEPARTMENT OF INSPECTIONS AND
APPEALS
Division of Administrative Hearings
Wallace State Office Building
Des Moines, Iowa 50319

Appeal Number: 16IWDUI052
OC: 2/8/15
Claimant: Appellant (6)

STATE CLEARLY

DECISION OF THE ADMINISTRATIVE LAW JUDGE

SCOTT NAIL
2103 YORK ST
DES MOINES, IA 50316

SCOTT NAIL
7618 Camelot Dr. #342
Urbandale, IA 50322

IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS/RECOVERY
MICHELLE SADDORIS, INVESTIGATOR

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to the department. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

April 22, 2016

(Decision Dated & Mailed)

Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

An appeal was filed from an unemployment insurance decision. The decision concluded that Scott Nail was overpaid unemployment benefits. A notice of hearing was mailed to Nail's last known address of record at 2103 York Street, Des Moines, IA 50316 for a telephone hearing to be held at 2:00 p.m. on March 22, 2016. Nail was not available at the telephone number provided for the hearing and did not participate in the hearing. Michelle Saddoris participated in the hearing on behalf of Iowa Workforce Development. She submitted Exhibits A-E into the record. Based upon the claimant's failure to participate in the hearing and the law, the following findings of fact, reasoning and conclusions of law, and decision are entered.

ISSUE:

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

FINDINGS OF FACT:

Iowa Workforce Development (IWD) sent a Decision to the claimant Scott Nail on January 7, 2016 notifying him that he had been overpaid \$4918.00 in unemployment benefits between the dates of February 8, 2015 and August 1, 2015 because he failed to report wages earned with Builder Services Group. The Decision was sent to Nail at the address of 2103 York St, Des Moines, IA 50316. On January 22, 2016 IWD received a letter from Nail postmarked January 19, 2016. On the return envelope Nail marked the "change in address box" and listed his address as 7618 Camelot Dr. #342, Urbandale, IA 50322. In the letter, Nail acknowledged that he "was still employed with Masco" as of February 8, 2015 through August 1, 2015. He stated, however, that his girlfriend called in his unemployment without his knowledge, deposited the check into his bank account, and withdrew the money from the account before he got home (1-22-16 Letter).

Michelle Saddoris of Iowa Workforce Development was available to participate in the hearing. The representative's decision concluded that the claimant was overpaid unemployment insurance benefits. Saddoris submitted Exhibits A through E into the record. Exhibit A-3 lists the amounts Nail received from Builder Services Group and the amount received from unemployment insurance benefits from February 14, 2015 through August 1, 2015.

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.

It appears that the claimant received a copy of the decision at his York Street address because he appealed that decision. He thereafter failed to participate in the hearing. The claimant 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.

It is possible that the claimant did not receive a Notice of Telephone Hearing at his new address. If so, he may 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 top of this decision. The request should explain the reason, or emergency, or other good cause that prevented the appellant from participating in the hearing at its scheduled time. A copy of this decision will be mailed to both listed addresses of the claimant to ensure that he receives notice.

DECISION:

The representative's unemployment insurance decision dated January 7, 2016 is affirmed.