

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL INNIS
Claimant

APPEAL NO: 14A-UI-07815-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 06/15/14
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:

Daniel Innis filed a late appeal from the July 16, 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 Mr. Innis had voluntarily quit without good cause attributable to the employer on December 17, 2013. Notices of hearing were mailed to the parties' last-known addresses of record for a telephone hearing to be held at 11:00 a.m. on September 11, 2014. A review of the Appeals Bureau's conference call system indicates that the claimant/appellant, Mr. Innis, was not available at the telephone number provided for the hearing and did not participate in the hearing. The employer was available through Tori Bronson. Based upon Mr. Innis' 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:

The hearing in this matter was initially scheduled for August 20, 2014 and the parties received appropriate notice of that hearing. Mr. Innis was available on August 20, 2014. Tori Bronson was available on behalf of the employer on that date. The hearing in this matter was to be consolidated with the hearing in Appeal Number 14A-UI-07816-JTT. Timeliness of Appeal was an issue in both case numbers. At the time of the August 20, 2014 hearing, Mr. Innis had mislaid his copies of the decisions from which he was appealing, which prevented him from providing meaningful responses to any questions the administrative law judge might ask him on the issue of the timeliness of his appeal from those decisions. At the time of the August 20, 2014 hearing, the administrative law judge transmitted a copy of the decisions to Mr. Innis by email attachment, but Mr. Innis' computer would not download the rather small digital files in a timely manner. After great delay in trying to move forward with the hearing, the administrative law judge concluded that the hearing should be adjourned and rescheduled so that the Appeals

Section could mail a copy of the decisions to Mr. Innis as exhibits to be considered in connection with the hearing.

The hearing was rescheduled to August 27, 2014 at 10:00 a.m. by agreement of the parties and the Appeals Section mailed the decisions/exhibit materials to Mr. Innis on August 25. The exhibits were mailed from Des Moines to Mr. Innis address in Des Moines. Items mailed from Workforce Development in Des Moines to an address in Des Moines area usually delivered the day after they are mailed. The administrative law judge notes that Mr. Innis lives within four miles of the Workforce Development building located at 1000 E. Grand Avenue. The administrative law judge notes that the Appeals Section had at that point transmitted the documents in question to Mr. Innis on three separate occasions. These included the initial mailing of the decisions to Mr. Innis in July, the email transmission on August 20, and the mailing on August 25. Mr. Innis and the employer again appeared for the hearing on August 27, 2014. Mr. Innis indicated at that time that he had not received the decisions/exhibit materials. The administrative law judge determined that the hearing should be postponed one more time so that the Appeals Section could mail the decisions/exhibit materials to Mr. Innis by certified mail. The decisions/exhibit materials were mailed to Mr. Innis by certified mail on August 28, 2014. The certified mail tracking information indicates that the Postal Service attempted to deliver the materials to Mr. Innis on August 29, could not find anyone home, and left a note for Mr. Innis.

The hearing was rescheduled to September 11, 2014 at 11:00 a.m. and notice was mailed to the parties at their last-known addresses of record on August 29, 2014. Mr. Innis received appropriate notice of the hearing and, on September 10, 2014 at 3:57 p.m., provided the Appeals Section with the telephone number at which he could be reached for the hearing: 515-724-1655. At the time of the hearing, Mr. Innis was not available at the telephone number he provided for the hearing. The administrative law judge made two attempts to reach Mr. Innis. The administrative law judge spoke to Mr. Innis' mother and left an appropriate with Mr. Innis' mother. The administrative law judge had also left a message for Mr. Innis on the telephone voice mail system. Mr. Innis did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. The employer was again available for the hearing through Ms. Bronson.

The July 16, 2014, reference 01, unemployment insurance decision disqualified Mr. Innis for benefits and relieved the employer of liability for benefits, based on an agency conclusion that Mr. Innis had voluntarily quit without good cause attributable to the employer on December 17, 2013.

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 § 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 force and effect.

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

DECISION:

The Claims Deputy's July 16, 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 in connection with the December 17, 2013 separation remains in effect.

James E. Timberland
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-242-5144

Decision Dated and Mailed

jet/css