

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIFFANY A ROLING
Claimant

APPEAL NO: 16R-UI-12593-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLLAR TREE STORES INC
Employer

OC: 08/14/16
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:

Tiffany Roling filed an appeal from the September 15, 2016, reference 03, decision that disqualified her for benefits and that relieved the employer's account for benefits, based on an agency conclusion that Ms. Roling had voluntarily quit on August 5, 2016 without good cause attributable to the employer. A notice of hearing was mailed to the parties' last-known addresses of record for a telephone hearing to be held at 10:00 a.m. on January 3, 2017. The employer was available for the hearing through Carrie Donoso. At the time set for the hearing, Ms. Roling was not available at the number she had registered with the Appeals Bureau as the number where she could be reached for 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 Tiffany Roling is the appellant in this matter. This matter was initially set for appeal hearing on October 6, 2016. Ms. Roling did not appear or participate at that time. The employer was available on that date through Carrie Donoso. Based on Ms. Roling's absence from the hearing she had requested, the administrative law judge entered a default decision on Appeal Number 16A-UI-10343-JTT. Ms. Roling appealed that decision to the Employment Appeal Board. The Employment Appeal Board concluded that Ms. Roling had not received notice of the October 6, 2016 hearing and remanded the matter for a new appeal hearing. The appeal hearing was then set for December 14, 2016. Both parties received appropriate notice of the December 14, 2016 appeal hearing and appeared on that date. However, Ms. Roling asserted at the time of the December 14, 2016 that she had been advised by an Appeals Bureau representative to defer submission of exhibits until after the appeal hearing. While the administrative law judge found Ms. Roling's assertion implausible and contrary to the

instructions set forth on the hearing notice, the administrative law judge concluded it was best to reschedule the appeal hearing to provide Ms. Roling with additional opportunity to submit her proposed exhibits. Ms. Roling stated on December 14, 2016 that she intended to submit text messages and a recorded phone call as proposed exhibits.

On December 15, 2016, the Appeals Bureau mailed notice to Ms. Roling and to the employer of the appeal hearing to take place at 10:00 a.m. on January 3, 2017. The employer was once again available through the hearing through Carrie Donoso. Ms. Roling was not available for the hearing at the number she had provided on December 2, 2016 for the proceeding set for December 14, 2016. Ms. Roling had not updated her telephone number registration since December 2, 2016. Ms. Roling had not followed through on submitting proposed exhibits. At the time set for the January 3, 2017 hearing, the administrative law judge made two attempts to reach Ms. Roling at the number she had registered on December 2, 2016. On both attempts, the administrative law judge allowed the Clear2There dialing system to continue its attempts to reach Ms. Roling. On each attempt, the Clear2There system eventually returned a pop-up message that there was not answer at the number. Not only did Ms. Roling not answer, but there was not voice mail system available. Accordingly, the administrative law judge was unable to leave a voice mail message for Ms. Roling. The administrative law judge held the record open until 10:15 a.m. to provide Ms. Roling further opportunity to participate in the appeal hearing. At 10:15 a.m., when Ms. Roling had not contacted the Appeals Bureau to indicate she was available for the hearing, the administrative law judge closed the hearing record and dismissed the employer representative/witness from the hearing. The administrative law judge deferred submitting this default decision until 10:46 a.m. in light of the Employment Appeal Board's preference that the parties be given 45 minutes from the scheduled time of the hearing to make themselves available for the hearing. Ms. Roling did not respond within that time-frame.

The parties were properly notified of the scheduled hearing on this appeal. The claimant/appellant failed to make herself available for the hearing at the telephone number she had registered for the hearing. Ms. Roling neither participated in the hearing nor requested a postponement of the hearing as required by the hearing notice.

The September 15, 2016, reference 03, decision disqualified Ms. Roling for benefits and relieved the employer's account for benefits, based on an agency conclusion that Ms. Roling had voluntarily quit on August 5, 2016 without good cause attributable to the employer.

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.

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 her 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.

The administrative law judge notes that the employer has now appeared three times for an appeal hearing concerning the August 5, 2016 separation.

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 emergency or other good cause that prevented the claimant/appellant from participating in the hearing at its scheduled time.

DECISION:

The September 15, 2016, reference 03, decision is affirmed. The decision that disqualified the claimant for benefits and that relieved the employer's account for benefits, based the August 5, 2016 separation, remains in effect.

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

jet/rvs