

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DUSTIN M SPEAR
Claimant

APPEAL NO. 14A-UI-08068-D

**ADMINISTRATIVE LAW JUDGE
DECISION**

**SERVICEMASTER OF FORT MADISON
MOWEN CLEANING SERVICE LLC**
Employer

**OC: 07/06/14
Claimant: Appellant (6)**

Iowa Code § 17A.12(3) – Default Decision
871 IAC 26.14(6) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

An appeal was filed from a representative's unemployment insurance decision dated July 31, 2014 (reference 03) that concluded Dustin M. Spear (claimant/appellant) was not eligible for unemployment insurance benefits after a separation from employment from Servicemaster of Fort Madison/Mowen Cleaning Service, L.L.C.. (employer/respondent). The claimant requested an in-person hearing. Notices of hearing were mailed to the parties' last-known addresses of record for an in-person hearing to be held at 9:00 a.m. on November 18, 2014. The claimant/appellant failed to respond to the notice and appear at the time and place set for the hearing, and therefore did not participate in the hearing. Based on the 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 on the claimant/appellant not participating in the hearing?

FINDINGS OF FACT:

The claimant/appellant was properly notified of the scheduled hearing on this appeal. The claimant/appellant failed to report at the time and place set for the hearing.

The representative's decision concluded that the claimant/appellant was not eligible for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedure 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.

Agency rule at 871 IAC 26.14(6) provides:

In the event that one or more parties which have received notice for a contested case hearing fail to appear at the time and place of an in-person hearing, the presiding officer may proceed with the hearing. If the appealing party fails to appear, the presiding officer may decide the party is in default and dismiss the appeal. The hearing 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 arrives for an in-person hearing while the hearing is in session, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If an absent party arrives for an in-person hearing after the record has been closed and after any party which had participated in the hearing has departed, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire ex parte as to the reason the party was late. For good cause shown, the presiding officer shall cause notice of hearing to be issued to all parties of record and reopen the record. The record shall not be reopened if the presiding officer does not find a good cause for the party's late arrival.

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 871 IAC 24.14(6), and the representative's decision remains in force and effect.

If the claimant/appellant disagrees with this decision, a written request to reopen the record must be made to the administrative law judge 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 the scheduled time. Alternatively, the appellant also has the option to appeal the decision directly to the Employment Appeal Board, whose address is listed on the cover page of this decision.

DECISION:

The representative's decision (reference 03) dated July 31, 2014 is affirmed. The decision denying benefits remains in effect.

Lynette A. F. Donner
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

ld/pjs