

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL D ROWLAND
Claimant

APPEAL NO. 100-UI-02189-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 09/27/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

An appeal was filed from an unemployment insurance decision dated October 15, 2009, reference 01, which held no disqualification would be imposed regarding Michael Rowland's separation from employment. An initial hearing was held by telephone on December 2, 2009. Mr. Rowland participated personally. The employer participated by Rosanna Adams. On December 11, 2009, an administrative law judge reversed the fact-finder's decision finding the claimant was discharged for disqualifying misconduct. Mr. Rowland timely appealed to the Employment Review Board by decision dated February 10, 2010. The Employment Review Board remanded the matter to an administrative law judge at Workforce Development Appeals to hold a new hearing and to issue an appealable decision. A telephone hearing was scheduled for and held on March 24, 2010. Mr. Rowland participated personally. The employer's representative, Mary Otu, provided her telephone number to the Appeals Section on March 23, 2010 but did not request a postponement of the hearing in this matter. At the time of hearing Ms. Otu indicated she would not be participating in the hearing as she was ill and also had been unable to reach necessary witnesses. The employer's representative entered a "non appearance" for the employer. Based upon the appellant's failure to participate in the hearing, the administrative file and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

ISSUE:

At issue in this matter is whether the decision previously entered should be affirmed.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The appellant failed to provide a telephone number at which the employer's witnesses could be reached for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. The employer's representative requested a "non-appearance" be entered for the employer.

The administrative law judge has conducted a careful review of the administrative file to determine whether the unemployment insurance decision should be affirmed.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 26.8(3), (4) and (5) provide:

Withdrawals and postponements.

(3) If, due to emergency or other good cause, a party, having received due notice, is unable to attend a hearing or request postponement within the prescribed time, the presiding officer may, if no decision has been issued, reopen the record and, with notice to all parties, schedule another hearing. If a decision has been issued, the decision may be vacated upon the presiding officer's own motion or at the request of a party within 15 days after the mailing date of the decision and in the absence of an appeal to the employment appeal board of the department of inspections and appeals. If a decision is vacated, notice shall be given to all parties of a new hearing to be held and decided by another presiding officer. Once a decision has become final as provided by statute, the presiding officer has no jurisdiction to reopen the record or vacate the decision.

(4) A request to reopen a record or vacate a decision may be heard ex parte by the presiding officer. The granting or denial of such a request may be used as a grounds for appeal to the employment appeal board of the department of inspections and appeals upon the issuance of the presiding officer's final decision in the case.

(5) If good cause for postponement or reopening has not been shown, the presiding officer shall make a decision based upon whatever evidence is properly in the record.

The administrative law judge has carefully reviewed the evidence in the record and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed.

DECISION:

The unemployment insurance decision dated October 15, 2009, reference 01, is affirmed. The decision allowing benefits remains in effect. The decision will become final unless an appeal is filed with the Employment Appeal Board within 15 days of the date of this decision.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs