

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID A LOGAN
Claimant

APPEAL NO. 11A-UI-07132-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EASTERN IOWA COMMUNITY COLLEGE
Employer

OC: 04/03/11
Claimant: Appellant (1-R)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38)(b) – Partial Unemployment
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

David Logan appealed from an unemployment insurance decision dated May 19, 2011, reference 01, that denied benefits effective April 3, 2011 based on Agency conclusions that he was not partially unemployed and working to the extent that he did not meet the work availability requirements of Iowa Code section 96.4(3). A telephone hearing was scheduled for June 23, 2011. Mr. Logan did not respond to the hearing notice instructions and did not participate in the hearing. The employer was available for the hearing through Lana Dettbarn, Executive Director of Administrative Services. Based on Mr. Logan'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:

Decision on the record.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal by notice mailed on June 10, 2011. The appellant, David Logan, failed to provide a telephone number at which he 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. There is no evidence the hearing notice was returned by the postal service as undeliverable for any reason.

The administrative law judge has conducted a careful review of the administrative file to determine whether the unemployment insurance decision should be affirmed. At the time of the May 18, 2011 fact-finding interview Mr. Logan and employer representative, Lana Dettbarn, Executive Director of Administrative Services, each told the Agency representative that Mr. Logan continued to be employed with the Eastern Iowa Community College District under the same conditions of the employment. Mr. Logan further advised that he had commenced additional employment in Illinois.

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 evidence in the record and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed.

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 beginning 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.

In his appeal letter, Mr. Logan raised additional issues regarding his eligibility for benefits for a period *after* the May 18, 2011 fact-finding interview, during a time when he was apparently between academic terms. In the employer's responsive pleading, the employer raised the issue of whether Mr. Logan was subject to the between academic terms disqualification provision of Iowa Code 96.4(5) and whether Mr. Logan met the definition of an employee under Iowa Administrative Code section 871 IAC 24.19. Since Mr. Logan was not available to waive formal notice on these issues so they could be addressed as part of his appeal, these additional matters will need to be addressed upon remand to the Claims Division.

DECISION:

The Agency representative's May 19, 2011, reference 01, decision is affirmed. The decision that denied benefits effective April 3, 2011 based on Agency conclusions that the claimant was not partially unemployed, and working to the extent that he did not meet the work availability requirements of Iowa Code section 96.4(3), remains in effect. This decision will become final unless a written request establishing good cause to reopen the record is made to the administrative law judge within 15 days of the date of this decision.

This matter is remanded to the Claims Division for adjudication of the claimant's eligibility for benefits for the period *after* the May 18, 2011 fact-finding interview, including whether he was an employee, and whether he is subject to the between academic terms disqualification provision.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs