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

SUMMER T FERGUSON
Claimant

APPEAL NO. 13A-UI-07985-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WESLEYLIFE
Employer

OC: 06/09/13
Claimant: Appellant (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 June 28, 2013, reference 01, that concluded the claimant was discharged for work-connected misconduct. A telephone hearing was scheduled for August 13, 2013. Proper notice of the hearing was given to the parties. The claimant did not participate in the hearing. Beth Crocker participated in the hearing on behalf of the employer and agreed that a decision could be made based on the information in the administrative file. Based on the claimant's failure to participate in the hearing, the administrative file, and the law, the following findings of fact, reasoning and conclusions of law and decision are entered.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The claimant failed to provide a telephone number at which she 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.

A careful review of the information in the administrative file has been conducted to determine whether the unemployment insurance decision should be affirmed.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance rules provide that when a party who has received due notice is unable to attend a hearing or request postponement within the prescribed time due to emergency or other good cause, the presiding officer may, if no decision has been issued, reopen the record and 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. 871 IAC 26.8(3). The rules further

provide that 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 after the presiding officer has issued a final decision in the case. 871 IAC 26.8(4). Finally, 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. 871 IAC 26.8(5).

The administrative law judge has carefully reviewed the information in the administrative file 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 claimant 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 claimant from participating in the hearing at its scheduled time.

DECISION:

The unemployment insurance decision dated June 28, 2013, reference 01 is affirmed. The decision disqualifying the claimant from receiving benefits 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.

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Steven A. Wise
Administrative Law Judge

_____
Decision Dated and Mailed

saw/pjs