

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER L WOODBURY
Claimant

APPEAL NO. 08A-UI-03460-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 01/27/08 R: 03
Claimant: Appellant (1)

Section 96.5-2-a – Discharge
Section 17A.12-3 – Non-appearance of Party
871 IAC 25.8(5) – Decision on the Record
871 IAC 26.14(7) – Late Call

STATEMENT OF THE CASE:

An appeal was filed from an unemployment insurance decision dated February 21, 2008, reference 01, that concluded Jennifer L. Woodbury (claimant/appellant) was not eligible for unemployment insurance benefits after a separation from employment from Hy-Vee, Inc. (employer/respondent). On April 10, 2008, notices of hearing were mailed to both parties' last known addresses of record for a telephone hearing to be held at 12:00 p.m. on April 23, 2008. The claimant/appellant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. The employer responded to the hearing notice and indicated that Tim Speir of Unemployment Insurance Services would participate as the employer's representative with two witnesses. When the administrative law judge contacted Mr. Speir for the hearing, he agreed that the administrative law judge should make a determination based upon a review of the information in the administrative file. The administrative law judge considered the record closed at 12:10 p.m. At 12:28 p.m., the claimant called the Appeals Section and requested that the record be reopened. She asserted that the documentation she had received indicated the hearing was scheduled for 12:30 p.m. that day, not 12:00 p.m. The administrative law judge instructed the claimant that she should go directly to her local Agency office in Waterloo and have the documents she claimed as showing a 12:30 p.m. hearing time faxed to the administrative law judge. As of the date of this decision, no such documentation has been received. Based on 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:

Should the representative's decision be affirmed on a basis of a review of the available information?

FINDINGS OF FACT:

The claimant received the hearing notice prior to the April 23, 2008 hearing. The instructions inform the parties that if the party does not contact the Appeals Section and provide the phone number at which the party can be contacted for the hearing, the party will not be called for the hearing. The first time the claimant directly contacted the Appeals Section was on April 23, 2008, 28 minutes after the scheduled start time for the hearing. The claimant had not read and complied with all the information on the hearing notice.

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:

The Iowa Administrative Procedures Act § 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.

871 IAC 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with 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 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.

At issue is a request to reopen the record made after the hearing had concluded. The request to reopen the record is denied because the party making the request failed to participate by reading and following the instructions on the hearing notice.

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. 871 IAC 25.8(5).

DECISION:

The unemployment insurance decision dated February 21, 2008, reference 01, is affirmed. The decision disqualifying the claimant from receiving benefits remains in effect.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw