

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NIKKI M STARR**

Claimant

**APPEAL NO. 11A-UI-04973-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PORTRAIT INNOVATIONS INC**

Employer

**OC: 03/06/11**

**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 by the employer from an unemployment insurance decision dated April 4, 2011, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was scheduled for May 10, 2011. Neither the employer nor the claimant participated in the hearing, since they did not call and provide telephone numbers where they could be reached for the hearing.

**FINDINGS OF FACT:**

The parties were properly notified of the scheduled hearing on this appeal. The employer failed to provide a telephone number at which a representative 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 appealed a decision that the claimant was discharged but not for misconduct. The employer's appeal letter states the employer appealed because the claimant voluntarily quit her job. No further information was provided in the appeal. There is no fact-finding information available to review in this case.

**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 employer has the burden to prove the claimant was discharged for work-connected misconduct or voluntarily quit employment. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Since the records reflect that the claimant was discharged and the employer has offered no evidence other than their appeal letter due to its failure to participate in the hearing, the unemployment insurance decision previously entered in this case is correct and should be affirmed.

Pursuant to the rule, the employer 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 employer from participating in the hearing at its scheduled time.

**DECISION:**

The unemployment insurance decision dated April 4, 2011, reference 01, is affirmed. The decision granting benefits to the claimant 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

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Decision Dated and Mailed

saw/kjw