

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHEAL D HILLIARD
Claimant

APPEAL NO. 13A-UI-13342-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED PARCEL SERVICE
Employer

**OC: 11/03/13
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

An appeal was filed from an unemployment insurance decision dated November 25, 2013, reference 01, that concluded claimant was not eligible. A hearing was scheduled for December 23, 2013. The appellant did not participate in the hearing as he was not available when called. The parties were properly notified of the scheduled hearing on this appeal. As shown on the Clear 2 There hearing control screen, there is a telephone number listed for the appellant. Furthermore, appellant did not request a postponement of the hearing as required by the hearing notice instructions. Employer declined to participate.

Based on 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. The administrative file is admitted as Exhibit One and official notice is taken of the Clear 2 There hearing control screen proving that Appellant did call prior to the start of hearing. Fact-finding notes are not part of the administrative file unless requested by the parties as shown by the hearing notice instructions, "Information submitted for the fact-finding interview is not automatically part of the record..."

Claimant called one hour and forty two minutes after the hearing scheduled time to ask to participate. Claimant slept through the hearing. Claimant did not hear the telephone ring when the call came in. Claimant missed the hearing due to a failure to read and follow the instructions on the hearing notice by being available when called.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. Having reviewed all of the available evidence in the administrative record, the administrative law judge finds: The parties were properly notified of the scheduled hearing on this appeal. As shown on the Clear2There hearing control screen, there is a phone number listed for the appellant. Claimant

did not participate or request a postponement of the hearing as required by the hearing notice instructions. There is no evidence the hearing notice was returned by the postal service as undeliverable.

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 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.

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.

DECISION:

The unemployment insurance decision dated November 25, 2013, reference 01, is affirmed. The decision disqualifying 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. Claimant's request to reopen the record is denied.

Marlon Mormann
Administrative Law Judge
Iowa Workforce Development
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-242-5144

Decision Dated and Mailed

mdm/pjs