

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**Appeal Number: 04A-UI-04207-D
OC 03/21/04 R 03
Claimant: Respondent**

**LYDIA M MCINTYRE
PO BOX 142
WINTERSET IA 50273**

**DOLGENCORP INC
DOLLAR GENERAL
c/o COMPENSATION TAX MANAGER
PO BOX 34150
LOUISVILLE KY 40232**

**JOHN MCKEE
703 E FILMORE ST
WINTERSET IA 50273**

**DOLLAR GENERAL
c/o DEB CALHOUN
1225 N WILLOW
AVOCA IA 51525**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

871 IAC 26.9 – Dismissal of Appeal – Sanctions for Failing to Comply With Discovery

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 8, 2004, reference 01, which allowed unemployment insurance benefits to the claimant. Prior to a final hearing being scheduled in this matter, subpoenas for documents were issued at the claimant's request. The employer has not complied with those subpoenas. After due notice was issued, an in-person hearing was held on June 8, 2004 to determine whether sanctions should be imposed on the employer for failing to comply with the subpoenas. The claimant participated in the hearing and was represented by personal representative John McKee with one other witness present, Wendy Wilson. The employer participated by Virginia Brown with one other witness present, Julie Hathaway-Raber. On July 2, 2004, the claimant's representative submitted an affidavit regarding compliance with the order to comply with discovery. Based on the evidence and the

law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

FINDINGS OF FACT:

During the June 8, 2004 hearing, the administrative law judge entered a verbal order, followed by a written order issued on June 11, 2004, finding the employer in default and requiring the employer to comply with the previously issued subpoenas not later than 10:00 a.m. on July 2, 2004, under penalty of the dismissal of the employer's appeal. The employer has failed to provide the subpoenaed documents as directed by the administrative law judge's order.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedure Act, Iowa Code Chapter 17A, and Agency rules Iowa Administrative Code chapter 26 allow prehearing discovery in contested cases. The claimant has attempted to engage in prehearing discovery, but the employer has not complied. The provisions of rule 871 IAC 26.9 provide for sanctions, up to and including dismissal of an appellant's appeal, for failure to comply with discovery requests. The evidence before the administrative law judge establishes that the employer has not complied with the verbal order of June 8, 2004 or the written order of June 11, 2004. Therefore, its appeal should be dismissed.

DECISION:

The April 8, 2004 (reference 01) decision is affirmed and remains in effect as if no appeal had been filed. Benefits are allowed, if the claimant is otherwise eligible.

ld/kjf