

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RITZ, ERICA, M**  
Claimant

**APPEAL NO. 13A-UI-03163-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THOMAS L CARDELLA & ASSOCIATES INC**  
Employer

**OC: 02/03/13**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Erica Ritz appealed from an unemployment insurance decision dated February 28, 2013, reference 01, that disqualified her for benefits. A telephone hearing was scheduled for April 15, 2013. Ms. Ritz provided a telephone number for the hearing, but was not available at that number at the scheduled time of the hearing. The employer was available for the hearing through Barb Tony of Equifax Workforce Solutions and Dana Lammers of Thomas L. Cardella & Associates, Inc. Based on Ms. Ritz'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:**

Decision on the record.

**FINDINGS OF FACT:**

The parties were properly notified of the scheduled hearing on this appeal. On March 26, 2013, the appellant, Erica Ritz, responded to the hearing notice instructions and provided a telephone number at which she could be reached for the hearing: 319-640-1942. However, at the scheduled time of the hearing, Ms. Ritz was not available at the telephone number she provided. Ms. Ritz did not request a postponement of the hearing as required by the hearing notice. The administrative law judge made two attempts to reach Ms. Ritz for the hearing. On each attempt, the administrative law judge encountered a Verizon Wireless message that indicated the number had been changed, disconnected, or was no longer in service. The hearing was scheduled for 9:00 a.m. The administrative law judge held the record open until 9:15 a.m. The administrative law judge then formally close the record and dismissed the employer representative and employer witness. As of the entry of this decision at 9:24 a.m., the claimant has not made herself available for the hearing.

The administrative law judge has conducted a careful review of the administrative file to determine whether the unemployment insurance decision should be affirmed. Ms. Ritz's appeal is on its face late. The appeal deadline was stated on the lower decision as March 10, 2013.

Because that was a Sunday, the deadline was extended by operation of law to Monday, March 11, 2013. Ms. Ritz's appeal indicates on its face that it was drafted on March 13, 2013. The appeal was mailed in an envelope that bears a March 15, 2013 postmark.

**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. The appeal is on its face late. In the absence testimony or other evidence from Ms. Ritz to establish good cause to treat the late appeal as a timely appeal, the administrative law judge would have no jurisdiction to disturb the lower decision that denied benefits.

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.

**DECISION:**

The Agency representatives February 28, 2013, reference 01, decision 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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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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