

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CYNTHIA K KYLE**  
Claimant

**APPEAL NO. 09A-UI-17930-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DES MOINES IND COMMUNITY SCH DIST**  
Employer

**OC: 08/02/09**  
**Claimant: Appellant (1)**

Iowa Code Section 96.4(3) – Able & Available  
871 IAC 26.8(5) – Decision on the Record

**STATEMENT OF THE CASE:**

Cynthia Kyle appealed from an unemployment insurance decision dated September 16, 2009, reference 02, that denied benefits for the two-week period of August 2-15, 2009 based on an Agency conclusion that she was not able and available for work during that time. A telephone hearing was scheduled for January 11, 2010. Ms. Kyle 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 Kathy McKay, Risk Manager. 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:**

Decision on the record.

**FINDINGS OF FACT:**

The parties were properly notified of the scheduled hearing on this appeal. The appellant, Cynthia Kyle, responded to the hearing notice instructions and provided a telephone number at which she could be reached for the hearing: 515-326-4290. But at the scheduled time of the hearing, Ms. Kyle was not available at the telephone number she provided. The administrative law judge made two attempts to reach Ms. Kyle at the number she had provided and let the phone ring at least 10 times. No one answered and there was no answering machine. Ms. Kyle did not request a postponement of the hearing as required by the hearing notice. The administrative law judge confirmed from the administrative file that the number Ms. Kyle provided for the appeal hearing was the same number she had used for the September 8, 2009 fact-finding interview.

The administrative law judge has conducted a careful review of the administrative file to determine whether the unemployment insurance decision should be affirmed. The deadline for appealing the September 16, 2009, reference 02 decision was September 26, 2009. Ms. Kyle filed her appeal by mail. The postmark date on the envelope is November 28, 2009.

**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—insofar as it concerns the September 16, 2009, reference 02 decision—is on its face late. Without testimony from Ms. Kyle to establish good cause to treat the late appeal as timely, the administrative law judge would have no jurisdiction to disturb the September 16, 2009, reference 02 decision. See Iowa Code section 96.6(2).

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 September 16, 2009, reference 02, decision is affirmed. The decision that denied benefits for the two-week period of August 2-15, 2009 based on an Agency

conclusion that she was not able and available for work during that time 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.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/pjs