

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DELMER L IVES

Claimant

APPEAL NO. 10A-UI-04180-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC

Employer

Original Claim: 01/24/10

Claimant: Appellant (4)

Iowa Code section 96.4(3) – Able & Available

871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

Delmer Ives appealed from an unemployment insurance decision dated March 10, 2010, reference 03, that denied benefits effective February 21, 2010 based on an Agency conclusion that he was not able to perform work due to injury. A telephone hearing was scheduled for May 3, 2010. The appellant 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 Sara Fiedler, Claims Administrator. 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:

Whether the claimant was able and available for work effective February 21, 2010.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The appellant, Delmer Ives, responded to the hearing notice instructions and provided a telephone number at which he could be reached for the hearing: 563-260-9133. However, at the scheduled time of the hearing, the appellant was not available at the telephone number he provided. The administrative law judge tried to reach the claimant twice and left messages on his voice mail box both times. The claimant did not request a postponement of the hearing as required by the hearing notice.

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, but modified to take into consideration the March 22, 2010, reference 04, decision that allowed benefits effective March 14, 2010 based on an Agency conclusion that the claimant was again able and available for work as of that date. Thus, the claimant was not able and available for work, and not eligible for benefits, for the period of January 21, 2010 through March 13, 2010.

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 March 10, 2010, reference 03, decision is modified. The claimant was not able and available for work, and not eligible for benefits, for the period of January 21, 2010 through March 13, 2010. 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/kjw