

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

ADAM T BAETKE
PO BOX 282
ELDRIDGE IA 52748

ELLER CONSTRUCTION CO INC
1111 TRAILS RD
ELDRIDGE IA 52748

Appeal Number: 05A-UI-03590-BT
OC: 12/26/04 R: 04
Claimant: Appellant (1)

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 26.14(7) - Late Call
Section 17A.12-3 - Non-Appearance of Party
871 IAC 25.8(5) - Decision on the Record

STATEMENT OF THE CASE:

An appeal was filed from an unemployment insurance decision dated March 28, 2005, reference 03, that concluded Adam Baetke (claimant) was not eligible for unemployment insurance benefits after a separation from employment from Eller Construction Co., Inc. (employer). Notices of hearing were sent to both parties' last known addresses of record for a telephone hearing to be held at 11:00 a.m. on April 26, 2005. The appellant was not available when called for the hearing and did not participate. The administrative law judge considered the record closed at 11:10 a.m. At 11:12 a.m., a woman called on behalf of the claimant reporting that he was taking a test and would be calling when he was done. At 11:20 a.m., the claimant called the Appeals Section and requested that the record be reopened. 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.

FINDINGS OF FACT:

The claimant received the hearing notice prior to the April 26, 2005 hearing. The instructions inform the parties that if the party does not contact the Appeals Section and provide the phone number at which the party can be contacted for the hearing, the party will not be called for the hearing. The claimant provided a telephone number but was not available when called for the hearing. He contacted the Appeals Section on April 26, 2005, 20 minutes after the scheduled start time for the hearing. The claimant said that he was taking a test and could not take a telephone call at that time. He had not called in and requested a postponement.

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:

The Iowa Administrative Procedures Act § 17A.12-3 provides in pertinent part:

If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and make a decision in the absence of the party. If a decision is rendered against a party who failed to appear for the hearing and the presiding officer is timely requested by that party to vacate the decision for good cause, the time for initiating a further appeal is stayed pending a determination by the presiding officer to grant or deny the request. If adequate reasons are provided showing good cause for the party's failure to appear, the presiding officer shall vacate the decision and, after proper service of notice, conduct another evidentiary hearing. If adequate reasons are not provided showing good cause for the party's failure to appear, the presiding officer shall deny the motion to vacate.

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 record was considered closed. The request to reopen the record is denied because the party making the request failed to participate by not being available at the telephone number provided.

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. 871 IAC 25.8(5).

DECISION:

The unemployment insurance decision dated March 28, 2005, reference 03, is affirmed. The decision disqualifying the claimant from receiving benefits remains in effect.

sdb/sc