

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIM M MORRISSEY
Claimant

APPEAL NO. 10A-UI-03807-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 01/10/10
Claimant: Appellant (1)

Iowa Code Section 96.3(7) - Overpayment
871 IAC 26.8(5) - Decision on the Record

STATEMENT OF THE CASE:

Tim Morrissey appealed from an unemployment insurance decision dated March 9, 2010, reference 02, that he was overpaid \$1,962.00 in benefits for the six-week period ending February 20, 2010 due to an Agency decision that he did not meet the minimum earnings requirement to be eligible for benefits in a second claim year. A telephone hearing was scheduled for April 28, 2010. Mr. Morrissey did not respond to the hearing notice instructions and did not participate in the hearing. 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 appellant, Tim Morrissey, was properly notified of the scheduled hearing on this appeal by notice mailed on March 24, 2010. Mr. Morrissey failed to provide a telephone number at which he could be reached for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. There is no evidence the hearing notice was returned by the postal service as undeliverable for any reason.

This matter was scheduled to be heard with Appeal Number 10A-UI-03806-JTT and a separate notice concerning that matter was mailed to Mr. Morrissey on March 24, 2010. Mr. Morrissey also failed to respond to that second notice regarding the hearing.

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.

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 representative's March 9, 2010, reference 02, decision is affirmed. The decision that the claimant was overpaid \$1,962.00 in benefits for the six-week period ending February 20, 2010 due to an Agency decision that he did not meet the minimum earnings requirement to be eligible for benefits in a second claim year 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/css