

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONALD MOORE
Claimant

APPEAL NO. 10A-UI-00759-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

D OF C FOODS INC
Employer

**Original Claim: 12/06/09
Claimant: Appellant (1)**

871 IAC 24.23(26) – Partial Unemployment Insurance Benefits
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

An appeal was filed from an unemployment insurance decision dated January 11, 2010, reference 03, that concluded he was still employed as he was when he was hired. A telephone hearing was scheduled for February 24, 2010. The claimant did not participate in the hearing. The employer agreed that a decision could be made based on the information in the administrative file. Based on the claimant's failure to participate in the hearing, the administrative file, and the law, the following findings of fact, reasoning and conclusions of law, and decision are entered.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The claimant 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. After the hearing had concluded, the claimant called the Appeals Section at 11:50 a.m. and admitted he had not followed the instructions on the hearing notice that required him to call in and provide his telephone number and was waiting for a call from someone with the Appeal Section. He stated that he had moved and had lost the hearing notice.

A careful review of the information in the administrative file has been conducted to determine whether the unemployment insurance decision should be affirmed. The claimant filed a claim for unemployment insurance benefits effective December 22, 2009, asserting his hours had been substantially reduced, but the claimant's hour of work varied throughout his employment and he was never guaranteed any certain number of hours.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance rules provide that when a party who has received due notice is unable to attend a hearing or request postponement within the prescribed time due to emergency or other good cause, the presiding officer may, if no decision has been issued, reopen the record and schedule another hearing. 871 IAC 26.8(3). The rules further provide that 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 after the presiding officer has issued a final decision in the case. 871 IAC 26.8(4). Finally, 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. 871 IAC 26.8(5). The evidence fails to show good cause for reopening the hearing.

The administrative law judge has carefully reviewed the information in the administrative file in the record and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed. The rules provide that a person is not eligible for partial unemployment insurance benefits if he is still employed for the same hours and wages as his original contract of hire. 871 IAC 24.23(26). The claimant was employed in the same way he was when he was hired and is not eligible for partial unemployment insurance benefits.

Pursuant to the rule, the claimant 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 claimant from participating in the hearing at its scheduled time.

DECISION:

The unemployment insurance decision dated January 11, 2010, reference 03, is affirmed. The decision disqualifying the claimant from receiving benefits remains in effect.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw