

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BOBBIJO PAGE
Claimant

APPEAL NO. 100-UI-12694-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

USA STAFFING INC
LABOR WORLD IA
Employer

OC: 06/28/09
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

The matter was before the administrative law judge for a new hearing upon remand by the Employment Appeal Board in Hearing Number 10B-UI-06155. Claimant had appealed from an unemployment insurance decision dated April 1, 2010, reference 04, that denied benefits in connection with a February 5, 2010 separation. A telephone hearing was scheduled for October 26, 2010. Ms. Page provided a telephone number for the hearing, but was not available at that number at the scheduled time of the hearing. The employer did not respond to the hearing notice instruction to provide a telephone number for the hearing and also did not participate. 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 new hearing on this appeal. The appellant, Page, responded to the hearing notice instructions and provided a telephone number at which she could be reached for the hearing: 641-260-0272. However, at the scheduled time of the hearing, the appellant was not available at the telephone number she provided. The administrative law judge made two attempts to reach the claimant at the number she had provided for the hearing. On each attempt, the administrative law judge was routed to a voice mail box where he left an appropriate message. The administrative law judge held the record open for 26 minutes after the scheduled start of the hearing to allow the claimant an opportunity to make herself available for the hearing. There was no response from the claimant. The appellant 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. Ms. Page's appeal on its face appears to be late. The appeal deadline on April 1, 2010, reference 0,4 decision is April 11, 2010. The only available appeal document is signed April 15, 2010, marked

as received at a local Workforce Development office on April 23, 2010, and marked as received by the Appeals Section on April 23, 2010.

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. In the absence of testimony or other evidence from Ms. Page to establish good cause to treat her appeal as a timely appeal, the administrative law judge would have no jurisdiction or authority to disturb the April 1, 2010, reference 04, decision that denied benefits. Ms. Page needed to present such evidence at the October 26, 2010 hearing.

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 April 1, 2010, reference 04, decision is affirmed. The decision that disqualified the claimant from receiving benefits in connection with the February 5, 2010 separation 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