

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SANDY G ABRAMS
Claimant

APPEAL NO: 12A-UI-05229-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WESTAR FOODS INC
Employer

OC: 04/08/12
Claimant: Appellant (5/R)

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits
871 IAC 26.14(7) – Late Call

STATEMENT OF THE CASE:

Sandy G. Abrams (claimant) appealed a representative's May 2, 2012 decision (reference 02) that concluded she was not qualified to receive partial unemployment insurance benefits in connection with her employment with Westar Foods, Inc. (employer). Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held at 10:00 a.m. on May 29, 2012. The claimant received the hearing notice and responded by calling the Appeals Section on May 16, 2012. She indicated that she would be available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, the claimant was not available; therefore, she did not participate in the hearing. The employer responded to the hearing notice and indicated that Jeff Oswald of Unemployment Insurance Services would participate as the employer's representative with two witnesses. When the administrative law judge contacted the employer for the hearing, Mr. Oswald agreed that the administrative law judge should make a determination based upon a review of the available information. The administrative law judge considered the record closed at 10:10 a.m. At 10:45 a.m., the claimant called the Appeals Section and requested that the record be reopened. Based on a review of the available information and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Should the hearing record be reopened?

Is the claimant employed by the employer for less than her usual hours and wages and eligible for full or partial unemployment insurance benefits?

FINDINGS OF FACT:

The claimant received the hearing notice prior to the May 29, 2012 hearing. The instructions inform the parties that they are to be available at the specified time for the hearing, and that if they cannot be reached at the time of the hearing at the number they provided, the judge may decide the case on the basis of other available evidence. The claimant's phone system was not

reliable, and she was aware prior to the scheduled hearing that her phone system was not reliable; because of the system's unreliability, the claimant did not receive the calls by the administrative law judge seeking to reach her for the hearing. The claimant did not make any arrangement in advance of the hearing to use a more reliable phone, and did not follow the instructions she had been given when she called into the Appeals Section on May 16 that she was to call back into the Appeals Section and give her control number if she had not received a call from the judge within five minutes after the scheduled time for the hearing; rather, she waited until 45 minutes after the scheduled time for the hearing.

The claimant started working for the employer on September 26, 2011. She worked part time as a server. She never worked full time hours; the most she has ever worked was 20 hours. The claimant's status with the employer has always been classified as part time.

The claimant had established an unemployment insurance benefit year effective April 8, 2012 seeking partial benefits for weeks she believed she was employed under her regular hours and wage. Subsequently there has been a separation from employment, on May 2, 2012; that separation has not yet been adjudicated.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant's request to reopen the hearing should be granted or denied. After a hearing record has been closed the administrative law judge may not take evidence from a non-participating party but can only reopen the record and issue a new notice of hearing if the non-participating party has demonstrated good cause for the party's failure to participate. 871 IAC 26.14(7)b. The record shall not be reopened if the administrative law judge does not find good cause for the party's late contact. *Id.* Failing to read or follow the instructions is not good cause for reopening the record. 871 IAC 26.14(7)c.

The claimant was not available for the May 29, 2012 hearing until after the hearing had been closed. Although the claimant intended to participate in the hearing, the claimant failed to follow the instructions she had been given and was not available at the scheduled time and day for the hearing and did not call back in promptly when she failed to receive the call for the hearing. The rule specifically states that failure to read or follow the instructions notice does not constitute good cause to reopen the hearing. The failure of her telephone system was within her control as she had been aware of problems with the system prior to the hearing but yet did not make alternative arrangements. The claimant did not establish good cause to reopen the hearing. Therefore, the claimant's request to reopen the hearing is denied.

The unemployment insurance law provides that a claimant is deemed partially unemployment insurance benefits if she is not employed at her usual hours and wages and earns less than her weekly benefit amount plus \$15.00. Iowa Code §96.19-38-b.

The employer was providing the claimant with substantially the same employment as it provided during her base period. Consequently, the claimant is not qualified to receive partial unemployment insurance benefits at least through May 2, 2012.

An issue as to whether the claimant's May 2, 2012 separation from employment was for disqualifying reasons arose as a result of the hearing. This issue was not included in the notice of hearing for this case, and the case will be remanded to the Claims Section for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

DECISION:

The unemployment insurance decision dated May 2, 2012 (reference 02) is modified with no effect on the parties. The claimant is not eligible for partial unemployment insurance benefits for the period of April 8, 2012 at least through May 2, 2012. The matter is remanded to the Claims Section for investigation and determination of the May 2, 2012 separation issue, and the claimant's eligibility as of that date.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs