

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WAYNE MCCALED**  
Claimant

**APPEAL NO: 10A-UI-13977-D**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ACTION STAFFING SERVICES INC**  
Employer

**OC: 01/06/08  
Claimant: Appellant (1)**

Section 96.4-3 – Able and Available  
§ 17A.12-3 – Non-appearance of Party  
871 IAC 26.8(5) – Decision on the Record

**STATEMENT OF THE CASE:**

An appeal was filed from a representative's unemployment insurance decision dated October 5, 2010 (reference 07) that concluded Wayne McCaleb (claimant/appellant) was not eligible for unemployment insurance benefits in conjunction with his employment with Action Staffing Services, Inc. (employer/respondent). The claimant requested that the hearing be held in-person. Notices of hearing were mailed to the parties' last-known address of record for an in-person hearing to be held at 11:00 a.m. on November 8, 2010. The claimant/appellant failed to respond to the hearing notice and appear at the time and place set for the hearing, and therefore did not participate in the hearing. The employer responded to the hearing notice and Kathleen Bagby appeared at the designated time and place for the hearing to participate as the employer's representative. When the claimant failed to appear for the hearing, Ms. Bagby agreed that the administrative law judge should make a determination based upon a review of the available information, including her informal statement. Based on the appellant's failure to participate in the hearing, the available information, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

**ISSUE:**

Should the representative's decision be affirmed on a basis of a review of the available information?

**FINDINGS OF FACT:**

The parties were properly notified of the scheduled hearing on this appeal. The appellant failed report at the scheduled time and place for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The administrative law judge has conducted a careful review of the available information to determine whether the unemployment insurance decision should be affirmed.

## REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedures Act at Iowa Code § 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 26.8(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. 871 IAC 26.8(5). The administrative law judge further notes that the representative's decision pertains to the claimant's eligibility as being able and available for work in the September 2010 time frame; some evidence suggests that the claimant's status may have changed in October 2010 and there may have been a separation from employment at that time. If the claimant were to reopen his claim for unemployment insurance benefits, there would need to be a review and determination as to his status after September 2010.

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 representative's unemployment insurance decision dated October 5, 2010 (reference 07) is affirmed. The decision disqualifying the claimant from receiving benefits 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.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs