

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The appellant failed to be available at the scheduled time of the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. The person who answered at the number provided by Ms. Seifert indicated that Ms. Seifert was out running errands and would be returning at approximately 10:00 a.m. She gave no indication that she was to play any role in Ms. Seifert's participation in the hearing. Ms. Seifert contacted the Appeals Section at approximately 9:45 a.m. in response to a message left by the administrative law judge at 8:00 a.m. She indicated that the number provided was a friend's cell phone number and that the friend was to come to her house for the hearing but did not arrive until 9:00 a.m. This statement is inconsistent with what the administrative law judge was led to believe by the person who answered the number at the scheduled time of the hearing. The administrative law judge declined to reopen the hearing record as Ms. Seifert did not establish good cause for not being available at the scheduled time.

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

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.

DECISION:

The unemployment insurance decision dated September 23, 2005, reference 01, is affirmed. The decision disqualifying the claimant from receiving benefits remains in effect. This decision will become final unless a written appeal is filed with the Employment Appeal Board within 15 days of the date of this decision.

cfc/kjw