

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARIA H MEDINA MARTINEZ**  
Claimant

**APPEAL NO. 13A-UI-00022-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PRIDE OF IOWA SANDWICHES INC**  
**PRIDE OF IOWA SANDWICHES**  
Employer

**OC: 07/29/12**  
**Claimant: Respondent (1)**

Iowa Code Section 96.5(3) – Work Refusal  
871 IAC 26.8(5) – Decision on the Record

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the December 27, 2012, reference 01, decision that concluded there had been no offer of work on November 21, 2012 and that allowed benefits provided the claimant was otherwise eligible. After due notice was issued, a hearing was set for February 4, 2013. Claimant Maria Medina Martinez did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. The employer representative, Betsy Mitchell, was not available at the telephone number the employer had provided for the hearing.

**ISSUE:**

Decision on the record.

**FINDINGS OF FACT:**

The employer is the appellant in this matter. The parties were properly notified of the February 4, 2013, 11:00 a.m. appeal hearing by notice mailed on January 8, 2013. On January 22, 2013, the employer/appellant contacted the Appeals Section with name of a representative who would represent the employer at the hearing, Betsy Mitchell, and a telephone number at which Ms. Mitchell could be reached at the time of the hearing, 319-642-5554. At the time set for the hearing, the administrative law judge made three attempts to contact the employer representative at the number the employer had provided for the hearing. On each attempt, the phone rang several times. Nobody answered. No answering machine was available. The administrative law judge notes from the administrative file that this is the same scenario the Workforce Development representative was confronted with on December 20, 2012, when that person attempted to reach the employer for the fact-finding interview.

The appellant did not request a postponement of the appeal 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.

**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.

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 representative's December 27, 2012, reference 01, decision is affirmed. The decision that there was no offer of work on November 21, 2012 and that allowed benefits provided the claimant was otherwise eligible 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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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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