

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 04A-UI-03248-SWT  
OC 08/03/03 R 01  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 17A.12-3 – Non-appearance of a Party  
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

An appeal was filed from an unemployment insurance decision dated March 15, 2004, reference 03, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was scheduled for April 7, 2004. The employer provided the name of Mike Jones as a participant for the hearing and telephone number to call. Jones was not available to take the call at the time of the hearing. The claimant did not participate in the hearing. Based on the employer's failure to participate in the hearing, the administrative file, and the law, the following findings of fact, reasoning and conclusions of law and decision are entered.

FINDINGS OF FACT:

The parties were properly notified of the hearing on this appeal, which was scheduled for April 7, 2004, at 10:30 a.m. The employer provided a telephone number at which Mike Jones

could be reached for the hearing but he was not available when the call was placed. He did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Jones called at approximately 11:15 a.m. and requested to participate in the hearing. He said he was handling another unemployment matter at the time of the hearing.

A careful review of the information in the administrative file has been conducted to determine whether the unemployment insurance decision should be affirmed. The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

#### REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedures Act Section 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 employer has not shown good cause to reopen this matter. The administrative law judge has carefully reviewed the information in the administrative file in the record and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account may be chargeable for benefits paid to the claimant based on this separation from employment.

Pursuant to the statute and 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 unemployment insurance decision dated March 15, 2004, reference 03, is affirmed. The decision holding the claimant qualified for benefits based on her separation from the employer remains in effect. The claimant, however, remains disqualified based on a prior separation from employment.

saw/kjf