

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DELISA M ROLAND
Claimant

APPEAL NO. 11A-UI-05604-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES INC
Employer

**OC: 02/20/11
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct
Section 871 IAC 26.8(5) – Decision on the Record
Section 96.6(2) – Timeliness of Appeals

STATEMENT OF THE CASE:

An appeal was filed from a representative's decision dated March 31, 2011, reference 01, which concluded that no disqualification would be imposed regarding Delisa Roland's separation from employment. A telephone hearing was scheduled for 8:00 a.m. on May 23, 2011. The employer, the appellant herein, responded to the notice of hearing but the designated witness was not available at the scheduled time. The witness contacted the Appeals Bureau at 8:26 a.m. and indicated she had written the hearing time incorrectly as 8:30 a.m. Because there was not good cause for the failure to participate at the scheduled time, the administrative law judge declined to reopen the hearing record. Based on the appellant's failure to participate in the hearing, the administrative file, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

At issue in this matter is whether the decision previously entered should be affirmed. There is also an issue concerning the timeliness of the employer's appeal.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The appellant failed to be available at the telephone number provided for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The employer's appeal letter is dated April 11, 2011, the date it was due since the stated deadline fell on a Sunday. There is a notation that a copy was sent to the claimant on April 18. There is no date of receipt stamped on the letter and there is no postmark on the envelope in which it was mailed. The claimant had other hearings involving this employer before Judge Susan Ackerman on April 27, 2011. The employer's appeal in this matter has a fax transmission line across the top indicating it was sent to the Appeal Bureau by Judge Ackerman on April 27, 2011.

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 the evidence in the record and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed. The employer did not avail itself of the opportunity to submit evidence in support of its burden of proving disqualifying misconduct.

The administrative law judge deems the employer's appeal to have been filed timely. Although it was received from Judge Ackerman on April 27, it is clear that it was in the possession of the Appeals Bureau before that date as a copy was sent to the claimant on April 18. It appears that it may have been treated as an exhibit for Judge Ackerman's hearings rather than a new appeal. Since it was not date stamped when originally received and there is no postmark, it is impossible to assign a date of receipt. Any doubt will be resolved in the employer's favor.

DECISION:

The unemployment insurance decision dated March 31, 2011, reference 01, is affirmed. The decision holding the claimant qualified for 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.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css