

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319**

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**MYKENZIE S ROBERTS**

Claimant

and

**KINSETH HOTEL CORPORATION**

Employer

**HEARING NUMBER: 18BUI-08576**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**SECTION:** 10A.601 Employment Appeal Board Review

**DECISION**

**FINDINGS OF FACT:**

A hearing in the above matter was scheduled for August 31, 2018 in which the issues to be determined were whether the claimant was laid off; discharged for misconduct; or whether the claimant voluntarily left for good cause attributable to the employer; and whether the Claimant was overpaid. Additional issues to be addressed were whether the Claimant should repay benefits and/or charge the Employer due to Employer participation in the Fact-finding Interview. Prior to the hearing date, the Employer faxed in a request to postpone the hearing on August 28, 2018 because a key witness would be unavailable due to a court-ordered meeting on the hearing date. The hearing was held on the day it was originally scheduled. The administrative law judge's decision was issued September 4, 2018, which determined the Claimant was eligible for benefits because the Employer "...did not provide sufficient evidence of deliberate conduct in violation company policy..." The administrative law judge's decision has been appealed to the Employment Appeal Board.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 10A.601(4) (2015) provides:

4. Appeal board review. The appeal board may on its own motion affirm, modify, or set aside any decision of a administrative law judge on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The appeal board shall permit such further appeal by any of the parties interested in a decision of an administrative law judge and by the representative whose decision has been overruled or modified by the administrative law judge. The appeal board shall review the case pursuant to rules adopted by the appeal board. The appeal board shall promptly notify the interested parties of its findings and decision.

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871 IAC 26.8(2) provides:

A hearing may be postponed by the presiding officer for good cause, either upon the presiding officer's own motion or upon the request of any party in interest. A party's request for postponement may be in writing or oral, provided the oral request is tape-recorded by the presiding officer, and is made not less than three days prior to the scheduled hearing. A party shall not be granted more than one postponement except in the case of extreme emergency.

Here the Employer's witness did not participate in the hearing due to a court-ordered meeting that conflicted with the scheduled hearing time. The Employer requested a postponement, but was denied unbeknownst to him. Although the Employer's request came after business hours, it was nonetheless sent three days prior to the hearing, *and* was in writing as prescribed by the aforementioned administrative rule. For this reason, we find the Employer substantially complied with the rule and shall remand this matter for a new hearing before an administrative law judge so that the Employer's previously unavailable witness may also have an opportunity to present testimony.

**DECISION:**

The decision of the administrative law judge dated September 4, 2018 is not vacated. This matter is remanded to an administrative law judge in the Unemployment Insurance Appeals Bureau. The administrative law judge shall conduct a hearing following due notice. After the hearing, the administrative law judge shall issue a decision which provides the parties appeal rights.

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Kim D. Schmett

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Ashley R. Koopmans

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James M. Strohan

AMG/fnv