

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RAYMOND BRINK**  
Claimant

**APPEAL NO. 09A-UI-00361-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ABCO ENGINEERING CORP**  
Employer

**OC: 11/30/08 R: 04  
Claimant: Respondent (1)**

871 IAC 26.14(7) - Late Call  
Section 17A.12-3 - Non-Appearance of Party  
871 IAC 25.8(5) - Decision on the Record

**STATEMENT OF THE CASE:**

An appeal was filed from an unemployment insurance decision dated January 7, 2009, reference 01, that concluded Raymond Brink (claimant) was eligible for unemployment insurance benefits after a separation from employment from ABCO Engineering Corporation (employer). Notices of hearing were sent to both parties' last known addresses of record for a telephone hearing to be held at 11:00 a.m. on February 16, 2009. The appellant did not participate in the hearing. The administrative law judge considered the record closed at 11:10 a.m. At 11:12 a.m., the employer called the Appeals Section and requested that the record be reopened. 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:**

The issue is whether the unemployment insurance decision previously entered in this case should be affirmed.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The employer received the hearing notice prior to the February 16, 2009 hearing. It was originally scheduled for 2:00 p.m. on January 26, 2009, but the claimant requested a morning hearing. It was then scheduled for 9:00 a.m. on February 10, 2009, but the employer called in objecting to the morning hearing. The employer agreed to compromise and the hearing was scheduled for 11:00 a.m. on February 16, 2009. When the employer was called for the hearing, he was not in his office. The administrative law judge advised the employer's receptionist that he had until 11:10 a.m. to call the Appeals Section to go forward with the hearing. The number of 800-532-1482 was provided to the receptionist for the employer to call. The employer called at 11:12 a.m. and reported he forgot about the hearing. He was told the record could not be reopened, as he did not call in prior to 11:10 a.m. The employer then stated he had called prior to 11:10 a.m. but had to wait to be transferred to

the Appeals Section. The administrative law judge checked with the Appeals clerks and was advised that the phone calls to the 800 number are directly answered by them and the phones had not been particularly busy this morning. The employer requested the record be reopened.

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:**

The Iowa Administrative Procedures Act § 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 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

At issue is a request to reopen the record made after the record was considered closed. Although the employer intended to participate in the hearing, that is not the determining factor when evaluating whether good cause exists to reopen the record when a party fails to participate. The employer complained about dealing with a large bureaucracy and his frustrations are understood, but that is why it is even more important to treat all individuals equally by enforcing the same standards; to do otherwise would be arbitrary and capricious. 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. 871 IAC 25.8(5).

**DECISION:**

The unemployment insurance decision dated January 7, 2009, reference 01, is affirmed. The decision holding the claimant qualified for benefits remains in effect.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw