

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DENNIS A CONNOR**  
Claimant

**APPEAL NO. 09A-UI-01689-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST LIBERTY FOODS LLC**  
Employer

**OC: 01/04/09 R: 04  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge  
Section 17A.12-3 – Non-appearance of Party  
871 IAC 25.8(5) – Decision on the Record  
871 IAC 26.14(7) – Late Call

**STATEMENT OF THE CASE:**

An appeal was filed from an unemployment insurance decision dated January 30, 2009, reference 01, that concluded Dennis A. Connor (claimant/respondent) was eligible for unemployment insurance benefits after a separation from employment from West Liberty Foods, Inc. (employer/appellant). Notices of hearing were sent to both parties' last known addresses of record for a telephone hearing to be held at 10:00 a.m. on February 24, 2009. The employer/appellant failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. The claimant responded to the hearing notice and indicated that he would participate in the hearing. When the administrative law judge contacted the claimant for the hearing, he agreed that the administrative law judge should make a determination based upon a review of the information in the administrative file. The administrative law judge considered the record closed at 10:10 a.m. A few minutes after 10:10 a.m., the employer called the Appeals Section and requested that the record be reopened. The employer's representative asserted that someone else in the employer's office had called in to the Appeals Section to provide a witness name and telephone number. However, the employer's representative did not have a control number, which the Appeals Section issues to each party who calls in for a hearing to verify that they have called. An entry of a call from the employer does not appear in the call-in logbooks maintained by the Appeals Section. Neither had the employer's representative followed the instructions routinely given to parties who call in as to what they should do if they do not get a call from the administrative law judge within five minutes after the designated hearing time; the employer's representative did not begin her attempt to contact the Appeals Section until at least 10:10 a.m. The employer's representative was allowed through February 25 to provide further information, such as the control number from the person she believed had called in for her, to indicate that there had been a call prior to the hearing, but as of the end of business on February 25, no further information was provided. 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:**

Should the representative's decision be affirmed on a basis of a review of the available information?

**FINDINGS OF FACT:**

The employer received the hearing notice prior to the February 24, 2009 hearing. The instructions inform the parties that if the party does not contact the Appeals Section and provide the phone number at which the party can be contacted for the hearing, the party will not be called for the hearing. The first time the employer directly contacted the Appeals Section was on February 24, 2009, more than ten minutes after the scheduled start time for the hearing. The employer had assumed that someone else within its organization had called the Appeals Section, when in fact that had not happened.

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 hearing had concluded. The request to reopen the record is denied because the party making the request failed to participate by reading and following the instructions on the hearing notice.

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 30, 2009, reference 01, is affirmed. The decision holding the claimant qualified for benefits remains in effect.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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