

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANNE L KRIENER FRANA
Claimant

APPEAL NO. 11A-UI-15450-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AASE HAUGEN HOMES INC
Employer

OC: 10/16/11
Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Still Employed Same Hours and Wages
871 IAC 26.8(5) - Decision on the Record

STATEMENT OF THE CASE:

Anne Kriener Frana appealed from an unemployment insurance decision dated November 14, 2011, reference 02, that denied benefits effective October 16, 2011 based on an Agency conclusion that she was not partially unemployed from Aase Haugen Homes, Inc. A telephone hearing was scheduled for March 19, 2012. Ms. Kriener Frana provided a telephone number for the hearing, but was not available at that number at the scheduled time of the hearing. The employer was available for the hearing through Sue Bjelland and Mary Oyloe. 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:

Decision on the record.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The appellant, Anne Kriener Frana, responded to the hearing notice instructions and provided a telephone number at which she could be reached for the hearing: 563-379-8210. However, at the scheduled time of the hearing, Ms. Kriener Frana was not available at the telephone number she provided. The appellant did not request a postponement of the hearing as required by the hearing notice. The administrative law judge has conducted a careful review of the administrative file to determine whether the unemployment insurance decision should be affirmed.

Ms. Kriener Frana's appeal is, on its face, late. The appeal deadline set forth on the decision was November 24, 2011, which was Thanksgiving Day. Because the appeal deadline fell on a state holiday, the deadline was extended to the next working day. The next working day was Monday, November 28, 2011. The appeal was faxed by Ms. Kriener Frana on December 2, 2011 and was received by the Appeals Section on that same day.

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 evidence in the record and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed.

In the absence of testimony from Ms. Kriener Frana to establish good cause under the law to treat her late appeal as a timely appeal, the administrative law judge would have no jurisdiction to disturb the lower decision that denied benefits.

Pursuant to 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 Agency representative's November 14, 2011, reference 02, decision is affirmed. The decision that denied benefits effective October 16, 2011 based on an Agency conclusion that the claimant was not partially unemployed from Aase Haugen Homes, Inc., remains in effect. This decision will become final unless a written request establishing good cause to reopen the record is made to the administrative law judge within 15 days of the date of this decision.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs