

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RINA P RAMOS**  
Claimant

**APPEAL NO. 08A-UI-00481-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 12/23/07 R: 03**  
**Claimant: Appellant (1)**

Iowa Code section 96.5(1) – Voluntary Quit  
871 IAC 26.8(5) – Decision on the Record

**STATEMENT OF THE CASE:**

Rina Ramos filed a timely appeal from the January 11, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was set for February 18, 2008, at 2:00 p.m. The employer was available through Tim Speir of Unemployment Insurance Services and Hy-Vee employees Brian Myers, Deanne Bickford, Mike Hanrahan, and Peggy O'Brien. Ms. Ramos did not respond to the hearing notice instructions to provide a telephone number the hearing. Though Ms. Ramos possessed some measure of English proficiency, the administrative law judge requested a secured Spanish-English interpreter, Ike Rocha, to assist with the hearing. Based on the claimant's failure to participate, the administrative file, and the law, the administrative law judge enters the following findings of fact, reasoning, conclusions, and decision.

The claimant contacted the administrative law judge late, after the judge had released the employer representative, the employer witnesses, and the interpreter. The claimant failed to provide good cause for her failure to comply with the hearing notice instructions.

**ISSUE:**

Decision on the record.

**FINDINGS OF FACT:**

The parties were properly notified of the scheduled hearing on this appeal. The appellant, Rina Ramos, did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Ms. Ramos did not request a postponement of the hearing as required by the hearing notice. Ms. Ramos' hearing notice had not been returned to the Appeals Section as undeliverable for any reason. Ms. Ramos had received the hearing notice in a timely fashion. Ms. Ramos had the ability to read and follow the hearing notice instructions, but failed to do so. Ms. Ramos is a non-native English speaker, but possesses sufficient proficiency in her English skills to read and follow the hearing notice instructions. Ms. Ramos did not actually read the hearing notice instructions until at or after the scheduled start of the

hearing. Ms. Ramos then called a telephone number other than any of the three numbers provided on the face of the hearing notice as part of the hearing notice instructions.

On January 28, 2008, the administrative law judge had spoken with the parties as part of a rescheduling conference. At that time, the administrative law judge specifically reminded both parties of their obligation to contact the Appeals Section staff as directed by the hearing notice to provide the telephone number at which they could be reached for the hearing and warned the parties the judge would not contact them if they failed to follow the hearing notice instructions.

Ms. Ramos contacted the administrative law judge at 2:27 p.m. The administrative law judge had excused the employer representative, the employer witnesses, and the interpreter at 2:15 p.m. In speaking with Ms. Ramos, the administrative law judge was able to conclude that Ms. Ramos had the ability to read and follow the hearing notice instructions, but failed to do so.

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

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. Failure to read or follow the

instructions on the notice of hearing shall not constitute good cause for reopening the record.  
871 IAC 26.14(7)(c).

**DECISION:**

The Agency representatives January 11, 2008, reference 01, decision is affirmed. The decision disqualifying the claimant from receiving benefits 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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