

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRYNDA L MCGARY
Claimant

APPEAL NO: 08A-UI-07216-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARSDEN BLDG MAINTENANCE LLC
Employer

OC: 06/29/08 R: 03
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
§ 17A.12-3 – Non-appearance of Party
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

An appeal was filed from a representative's unemployment insurance decision dated July 28, 2008 (reference 01) that concluded Brynda L. McGary (claimant/respondent) was eligible for unemployment insurance benefits after a separation from employment from Marsden Building Maintenance, L.L.C. (employer/appellant). By hearing notices sent on August 12, 2008 to the parties' addresses of record, a telephone hearing was scheduled for 2:00 p.m. on August 25, 2008. The employer's representative received the hearing notice and responded by calling the Appeals Section on August 25, 2008. The representative indicated that Jeff Arne would be available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, Mr. Arne was unaware of and unprepared for the hearing. Therefore, the employer did not participate in the hearing. The claimant responded to the hearing notice and indicated that she would participate in the hearing with one other witness. When the administrative law judge contacted the claimant for the hearing, she agreed that the administrative law judge should make a determination based upon a review of the information in the administrative file plus her informal statement. Based on the appellant's failure to participate in the hearing, the administrative file, the claimant's informal statement, 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 parties were properly notified of the scheduled hearing on this appeal. The appellant failed to be prepared for the hearing at the scheduled day and time and did not participate in the hearing or make a timely request for a postponement of the hearing as required by the hearing notice. The administrative law judge has conducted a careful review of the available information 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 26.8(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 employer has not demonstrated good cause for its failure to be prepared to participate in the hearing as scheduled. 871 IAC 26.14(7)(c). 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 26.8(5).

DECISION:

The representative's unemployment insurance decision dated July 28, 2008 (reference 01) is affirmed. The decision holding the claimant qualified for 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs