

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BLANCHE I ENSOR**  
Claimant

**APPEAL NO. 12A-UI-10548-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BRAY & KLOCKAU PLC**  
Employer

**OC: 08/05/12**  
**Claimant: Appellant (1)**

Iowa Code Section 96.4(3) – Able & Available  
871 IAC 26.8(5) – Decision on the Record

**STATEMENT OF THE CASE:**

Blanche Ensor appealed from an unemployment insurance decision dated August 23, 2012, reference 02, that denied benefits effective August 5, 2012 based on an agency conclusion that she did not meet the work availability requirement because of the time and effort she was dedicating to becoming self-employed. A telephone hearing was scheduled for September 27, 2012. The appellant 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 Lori Klockau. Based on the claimant/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:**

Claimant Blanche Ensor is the appellant in this matter and in a companion case. The parties were properly notified of the appeal hearing set for September 27, 2012 by notice mailed on September 11, 2012. The hearing in this matter was to be consolidated with the hearing in Appeal Number 12A-UI-10547-JTT and the hearing notice for that matter was also mailed to the parties on September 11, 2012.

On September 13, 2012, Ms. Ensor responded to the hearing notice instructions and provided a telephone number at which she could be reached for the hearing: 319-330-3155. On that same day, Ms. Ensor raised an issue with the 8:00 a.m. scheduled start of the hearing when speaking to the Appeals Section staff. Ms. Ensor told the staff that she needed a hearing later in the day, that she had an eye doctor appointment at 8:15 a.m., that she did not want the hearing postponed beyond September 27, and that she would keep the 8:00 a.m. hearing time if needed. In response to a message from the Appeals Section staff, the administrative law judge telephoned Ms. Ensor at the number she had provided. The administrative law judge had to leave a voice mail message for Ms. Ensor. In the message, the administrative law judge

requested that Ms. Ensor contact the administrative law judge to discuss the scheduling concern. The administrative law judge's call was a recorded call. Ms. Ensor did not respond to the administrative law judge's message.

On the day before the hearing, the administrative law judge made another attempt to contact Ms. Ensor to discuss the scheduling concern, or at least to clarify whether there still was a scheduling concern. The administrative law judge again had to leave a voice mail message for Ms. Ensor. The administrative law judge again requested a return phone call to discuss the scheduling issue. The call was a recorded call. Ms. Ensor did not return that call.

On September 27, 2012, the administrative law judge made two attempts to contact Ms. Ensor at the scheduled start of the hearing. On each attempt, the call immediately rolled into Ms. Ensor's voice mail system and the administrative law judge left an appropriate message. Ms. Ensor did not respond to either message or otherwise make herself available for the hearing. The employer was available through Lori Klockau. At 8:16 a.m., the administrative law judge closed the hearing record. As of the entry of this decision, Ms. Ensor has not responded to any of the four messages the administrative law judge has left for her.

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. The request must also explain why the claimant did not respond to the earlier message left for her by the administrative law judge.

**DECISION:**

The Agency representatives August 23, 2012, reference 02, decision is affirmed. The decision that denied benefits effective August 5, 2012 based on the claimant's limited availability for work in light of self-employment 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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