

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDSEY R KLINKKAMMER
Claimant

APPEAL NO. 10A-UI-05184-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KUM & GO LC
Employer

**Original Claim: 02/21/10
Claimant: Respondent (1/R)**

Section 96.5-2-a – Discharge
§ 17A.12-3 – Non-appearance of Party
871 IAC 26.8(5) – Decision on the Record
Iowa Code § 96.6-3 – Postponement Requests
871 IAC 26.8 – Postponement Requests
Section 96.7-2-a(2) – Charges Against Employer’s Account

STATEMENT OF THE CASE:

An appeal was filed from a representative’s unemployment insurance decision dated March 25, 2010 (reference 01) that concluded Lindsey R. Klinkkammer (claimant/respondent) was eligible for unemployment insurance benefits after a separation from employment from Kum & Go, L.C. (employer/appellant). On April 19, 2010, hearing notices were mailed to the parties’ last known addresses of record for a telephone hearing to be held at 11:00 a.m. on May 19, 2010. The employer’s representative received the hearing notice. On May 18 the employer’s representative responded by calling the Appeals Section and requested that the hearing set for the next day be postponed. The reason for the request was that the employer’s intended witness was scheduled to be at a regional managers meeting on May 19; however, no information was provided to explain why the request for postponement was only made the day before the hearing. Since the request for postponement was denied, the employer did not participate in the hearing. Based on the appellant’s failure to participate in the hearing, the available information, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the employer’s request for a postponement properly denied?

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

Is the employer’s account subject to charge?

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The appellant failed to be available at the scheduled day and time set for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. While a request for a postponement was made, it was not within the time provided by rule nor for any last-minute

emergency reason. The administrative law judge has conducted a careful review of the available information to determine whether the unemployment insurance decision should be affirmed.

The claimant established an unemployment insurance benefit year effective January 4, 2009. Upon the expiration of that claim year with an extension to receive emergency unemployment compensation (EUC) benefits through February 20, 2010, she established a second regular claim year effective February 21, 2010. Agency records indicate that all of the wages paid by the employer to the claimant (\$1,975.00) were paid to her in the fourth quarter 2009; she was discharged on December 9, 2009. The claimant reported no wages from any employer on her weekly claims submitted during the fourth quarter 2009.

REASONING AND CONCLUSIONS OF LAW:

The first issue that must be addressed is whether the employer's request for postponement of the hearing, effectively only about 24 hours prior to the scheduled hearing time, should have been granted. While reasonable requests for postponement can be granted, good cause must be shown; and, at least absent extraordinary emergency situations, a request is to be made within three business days prior to the hearing. Iowa Code § 96.6-3; 871 IAC 26.8(2). The employer did not request the postponement within three days prior to the hearing, and the reason for the request was not shown to be of such an emergency nature as would excuse a failure to have made a timely request for a postponement. The employer's late request to postpone the hearing was properly denied.

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 administrative law judge has carefully reviewed the available information and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed. 871 IAC 26.8(5). 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.

An employer's account is only chargeable if the employer is a base period employer. Iowa Code § 96.7. The employer did not employ the claimant during the base period of either her January 4, 2009 claim year or her February 21, 2010 claim year; therefore the employer is not currently chargeable for benefits paid to the claimant.

Some information discovered in the Agency records indicates that the claimant received income from the employer that should have been reported to reduce her benefits for those weeks. This is a matter not included on the notice of hearing, and the administrative law judge is without jurisdiction to make a ruling on the issue. This matter is remanded to the Claims Section to determine if the claimant received wages that she failed to report.

DECISION:

The representative's unemployment insurance decision dated March 25, 2010 (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. The matter is remanded to the Claims Section for investigation and determination of the unreported wage issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw