

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHANIE D PETERSEN
Claimant

APPEAL NO: 07A-UI-00212-S2

**ADMINISTRATIVE LAW JUDGE
DECISION**

LUTHERAN HOMES SOCIETY
Employer

**OC: 11/19/06 R: 04
Claimant: Appellant (1)**

871 IAC 26.8(5) - Decision on the Record

STATEMENT OF THE CASE:

An appeal was filed from an unemployment insurance decision dated December 20, 2006, reference 03, that denied benefits. A hearing was scheduled for January 29, 2007, in Davenport, Iowa. The appellant did not respond to the hearing notice instructions and did not participate in the hearing. 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:

Should the previous decision be affirmed?

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The appellant failed to appear at the hearing location and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The claimant reported after the hearing record had been closed and had not followed the hearing notice instructions pursuant to 871 IAC 26.14(6).

The claimant received the hearing notice prior to the January 29, 2007, hearing. The instructions informed the parties to report for an in-person hearing at 902 West Kimberly Road, Davenport, Iowa on January 29, 2007, at 1:30 p.m. The claimant did not report for the in-person hearing on January 29, 2007, until 1:55 p.m. The employer had been released at 1:35 p.m. The claimant had not read all the information on the hearing notice, and allowed herself enough time to find the hearing location.

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:

The first issue in this case is whether the claimant's request to reopen the hearing should be granted or denied.

871 IAC 26.14(6) provides:

(6) In the event that one or more parties which have received notice for a contested case hearing fail to appear at the time and place of an in-person hearing, the presiding officer may proceed with the hearing.

a. If an absent party arrives for an in-person hearing while the hearing is in session, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If an absent party arrives for an in-person hearing after the record has been closed and after any party which had participated in the hearing has departed, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire ex parte as to the reason the party was late. For good cause shown, the presiding officer shall cause notice of hearing to be issued to all parties of record and reopen the record. The record shall not be reopened if the presiding officer does not find a good cause for the party's late arrival.

The first time the claimant reported for the January 29, 2007, in-person hearing was after the employer had been released. Although the claimant may have intended to participate in the hearing, the claimant failed to read or follow the hearing notice instructions and did not report to the specified location for the hearing on a timely basis. The claimant did not establish good cause to reopen the hearing. Therefore, the claimant's request to reopen the hearing is denied.

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.

DECISION:

The unemployment insurance decision dated December 20, 2006, reference 03, is affirmed. The representative's decision 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.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs