

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD F KESSLER
Claimant

APPEAL NO. 06A-UI-10813-HT

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

HENNINGSEN CONSTRUCTION INC
Employer

**OC: 03/12/06 R: 01
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 October 30, 2006, reference 01, that concluded the claimant was disqualified from receiving unemployment benefits. A telephone hearing was scheduled for November 27, 2006. The appellant 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:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The appellant provided a telephone number of (712)243-7078. That number was dialed at 10:00 a.m. and the only response was an answering machine which clearly identified it as belonging to Donald Kessler. A message was left indicating the hearing would proceed without the appellant's participation unless he contacted the Appeals Section at the toll-free number prior to the close of the record. By the time the record was closed at 10:12 a.m. the appellant had not responded to the message and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

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

The record was closed at 10:12 a.m. At 1:20 p.m. the claimant contacted the Appeals Section. The administrative law judge was able to return the call at 2:26 p.m. The appellant indicated he had received the notice of the hearing, knew the time and date it was scheduled, and provided a telephone number. However, at the time and date it was scheduled he "spaced it out" and was doing errands and did not make himself available to participate in the hearing.

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.

The appellant's request to reopen the record is denied. Under the provisions of 871 IAC 26.14(7) the non-appearing party must establish good cause for failing to participate in the hearing. Forgetting the time and date the hearing is scheduled is not good cause.

DECISION:

The unemployment insurance decision dated October 30, 2006, reference 01, is affirmed. The decision disqualifying the claimant from receiving benefits remains in effect.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs/pjs

