

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

DAN A HENKELS
510 W 16TH
DUBUQUE IA 52001

CITY OF DUBUQUE
ATTN PERSONNEL DEPARTMENT
50 W 13TH ST
DUBUQUE IA 52001-4864

Appeal Number: 04A-UI-00223-DT
OC: 02/16/03 R: 04
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 17A.12-3 – Non-Appeal of Party
871 IAC 25.8(5) – Decision on the Record
871 IAC 26.14(7) – Late Call

STATEMENT OF THE CASE:

An appeal was filed from an unemployment insurance decision dated January 2, 2004, reference 02, that concluded Dan A. Henkels (claimant/**Respondent**) was eligible for unemployment insurance benefits after a separation from employment from the City of Dubuque (employer/**Appellant**). Notices of hearing were sent to both parties' last-known addresses of record for a telephone hearing to be held at 8:30 a.m. on January 30, 2004. The employer received the hearing notice and responded by calling the Appeals Section on January 15, 2004. The employer indicated that Darleen Hantelman would be available at the scheduled time for the hearing at telephone number (563) 589-4115. However, when the administrative law judge

called that number several times at and after the scheduled time for the hearing, Ms. Hantelman was not available. Therefore, the employer did not participate in the hearing. The claimant responded to the hearing notice and indicated that he would participate in the hearing. When the administrative law judge contacted the claimant for the hearing, he agreed that the administrative law judge should make a determination based upon a review of the information in the administrative file plus his informal statement given at that time. The administrative law judge considered the record closed at 8:46 a.m. when she disconnected from the claimant. At 8:47 a.m., Ms. Hantelman called the Appeals Section and requested that the record be reopened. 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.

FINDINGS OF FACT:

The employer received the hearing notice prior to the January 30, 2004 hearing. The instructions inform the parties that they must be available at the time specified, and if the party is not available for the hearing, the administrative law judge may make a decision based upon other available information. The reason the employer's representative was not available for the hearing at the scheduled time for the hearing and for some time thereafter was that she had picked up other telephone calls that had come in on other lines, and was involved in other business when the calls came from the administrative law judge for the hearing.

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 Iowa Administrative Procedures Act Section 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 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

At issue is a request to reopen the record made after the hearing had concluded. The request to reopen the record is denied because the party making the request failed to participate by reading and following the instructions on the hearing notice.

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 25.8(5).

DECISION:

The unemployment insurance decision dated January 2, 2004, reference 02, is affirmed. The decision holding the claimant qualified for benefits remains in effect.

ld/b