**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS**

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

**HENRY P TOWNSEND**
Claimant

**GOODWILL INDUSTRIES OF THE HEARTLAND**
Employer

**APPEAL NO: 09O-UI-15616-S2T**

**ADMINISTRATIVE LAW JUDGE DECISION**

**OC: 07/05/09**
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct
871 IAC 26.8(5) – Decision on the Record

**STATEMENT OF THE CASE:**

An appeal was filed from an unemployment insurance decision dated August 3, 2009, reference 01, that allowed benefits. A telephone hearing was scheduled for November 19, 2009. 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 provide a telephone number at which the appellant could be reached for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The appellant called the administrative law judge at 10:08 a.m. on November 19, 2009, after the administrative law judge released the respondent at 10:07 a.m. on November 19, 2009. The appellant indicated that it had received and read the hearing notice. The appellant did not follow the hearing notice instructions because it had been told by an unknown person that it did not need to provide a telephone number prior to the time of 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:**

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.

The first time the appellant called the Appeals Section for the November 19, 2009, hearing was after the hearing had been closed. Although the appellant intended to participate in the hearing, the appellant failed to follow the hearing notice instructions and did not contact the Appeals Section prior to the hearing. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. Intent alone is not sufficient. An intent must be accompanied by an overt act carrying out that intent. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). In the case of an appeal hearing, that overt act is to call the Appeals Section and provide a telephone number where the party may be contacted. The appellant did not do this and therefore has not established good cause to reopen the hearing. The appellant'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 August 3, 2009, reference 01, 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.

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Beth A. Scheetz
Administrative Law Judge

_____
Decision Dated and Mailed

bas/pjs