

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANA L COOK

Claimant

APPEAL NO: 10A-UI-07824-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIRST HOSPITALITY GROUP LLC

Employer

OC: 03/28/10

Claimant: Respondent (1)

Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge
§ 17A.12-3 – Non-appearance of Party
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

An appeal was filed from a representative's unemployment insurance decision dated May 26, 2010 (OC 03/23/10 – reference 03) that concluded Diana L. Cook (claimant/respondent) was eligible for unemployment insurance benefits after an April 28, 2010 separation from employment from First Hospitality Group, L.L.C. (employer/appellant). Notices of hearing were mailed to the parties' last-known addresses of record for a telephone hearing to be held at 2:00 p.m. on July 15, 2010. The employer received the hearing notice and responded by faxing a copy of the hearing notice along with the same documents it had provided at the time of the fact-finding interview to the Appeals Section on July 14, 2010. However, the employer/appellant failed to follow the instructions on the hearing notice to call the Appeals Section and provide a telephone number at which a witness or representative could be reached for the hearing; therefore, it did not participate in the hearing. Based on the appellant's failure to participate in the hearing, the available information including all of the documentation from the fact-finding interview, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

ISSUE:

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

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 a witness or representative 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 administrative law judge has conducted a careful review of the available information to determine whether the unemployment insurance decision should be affirmed.

The administrative law judge notes that there is another representative's decision (OC 03/29/09 – reference 05) which was issued on April 28, 2010 which concluded that there was a disqualifying separation (suspension) between the parties which had occurred on March 27, 2010, and that the claimant was not eligible to receive unemployment insurance benefits until she had requalified from that separation. That decision was not appealed, and the claimant is currently barred from eligibility due to that separation and determination, regardless of the subsequent secondary separation.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedures Act at Iowa Code § 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.

DECISION:

The representative's unemployment insurance decision dated May 26, 2010 (reference 03) is affirmed. The decision holding the claimant qualified for benefits with regard to the April 28, 2010 separation 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. Benefits would be allowed, if the claimant was otherwise eligible, which she is not.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css