

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENISE S MICKLEWRIGHT
Claimant

APPEAL NO: 12A-UI-03415-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KIMBERLY CONCESSIONS INC
Employer

**OC: 11/13/11
Claimant: Respondent (1)**

Iowa Code § 96.5(3)a – Refusal of Offer of Work

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's April 2, 2012 determination (reference 02) that held the claimant eligible to receive benefits as of November 13, 2011, because the employer did not offer the claimant work on November 1. The claimant participated in the hearing. The employer did not respond to the hearing notice or participate in the hearing.

After the hearing had been closed and the claimant had been excused, the employer called the Appeals Section to participate in the hearing. The employer made a request to reopen the hearing. Based on the employer's request to reopen the hearing, the administrative record and the law, the administrative law judge concludes the claimant is eligible to receive benefits as of November 13, 2011.

ISSUES:

Is there good cause to reopen the hearing?

Did the employer offer the claimant work on November 1, 2011?

FINDINGS OF FACT:

The claimant works for the employer as a seasonable concession employee at a city golf course. The golf course closed for the season in mid-November 2011. The employer anticipates the claimant will return to work at the golf course in early April 2012.

The employer put notices in employees' paychecks, including the claimant's, in late September. The notice informed employees about the job openings at the indoor ice skating rink. The notice asked employees if they were interested and if they were interested, they were to indicate the days and times of their availability. The claimant did not return the notice to the employer. The claimant did not complete and return the notice even after the employer again asked her to complete it on November 1, 2011. The claimant did not establish a claim for benefits until the week of November 13, 2011.

The employer did not call the Appeals Section before the hearing to provide the phone number or the name of the employer's witness as the hearing instructions tells parties to do. After the hearing had been closed the claimant had been excused, the employer called the Appeals Section to participate in the hearing. The employer stated that he had faxed information for the hearing, along with his name and phone number, on April 9, 2012. The administrative law judge did not receive this information and there is nothing in the file that was faxed from the employer on April 9. The employer requested that the hearing be reopened.

REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. 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. 871 IAC 26.14(7)(b) and (c).

The employer did not follow the hearing instruction after receiving the hearing notice. The hearing instructions specifically tells parties they must call the Appeals Section to participate in the hearing. The hearing instructions further state that the judge **will not** call a party, if the party does not call the Appeals Section before the scheduled time and date of the hearing. Although the employer asserted documents with his name and phone number were faxed on April 9, the file does not contain these documents. The administrative law judge has no knowledge if the documents were successfully faxed or not. The reason a party must call the Appeals Section before the hearing is to receive a control number that verifies the party has called in before the hearing. Since the Appeals Section receives hundreds of faxed pages daily there is no evidence that the employer faxed or did not fax in information about who to call and what phone to call the employer for the hearing.

Since the employer did not call the Appeals Section until the hearing had been closed and the claimant had been excused, and the employer did not read and follow the hearing instructions, the employer has not established good cause to reopen the hearing. The employer's request to reopen the hearing is denied.

A claimant is not qualified to receive unemployment insurance benefits if she refuses an offer of suitable work without good cause. Iowa Code § 96.5(3)a. The record does not establish that the employer offered the claimant a job at the ice rink. The employer only asked the claimant to complete a form again on November 1. This does not amount to an offer of work. Therefore, the claimant did not refuse an offer that the employer did not make.

In the alternative, the employer offered the claimant a job at an ice rink on November 1, 2011, but before she established her claim for benefits the week of November 13, 2011. The offer of work must occur within a claimant's benefit year. 871 IAC 24.24(8).

As of November 13, 2011, the claimant is eligible to receive benefits. When the claimant returns to work at the golf course and earns more than \$119.00 a week, she will not be eligible to receive benefits because of excessive earnings.

DECISION:

The employer's request to reopen the hearing is denied. The representative's April 2, 2012 determination (reference 02) is affirmed. The employer did not make a bona fide offer to work at an ice rink. Also, if the employer offered her work, it was done before the claimant established her claim for benefits. Therefore, as of November 13, 2011, the claimant is qualified to receive benefits.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs