

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAWN MAIGE
Claimant

APPEAL NO. 11A-UI-11726-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

**OC: 07/31/11
Claimant: Appellant (1)**

Iowa Code § 96.5(2)(a) - Discharge
871 IAC 26.8(5) - Decision on the Record

STATEMENT OF THE CASE:

Dawn Maige appealed from an unemployment insurance decision dated August 26, 2011, reference 01, that denied benefits. A telephone hearing was scheduled for September 28, 2011. Ms. Maige did not respond to the hearing notice instructions and did not participate in the hearing. The employer was available for the hearing through Kelly Landolfi of Barnett Associates. 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:

Decision on the record.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal by notice mailed on September 8, 2011. The appellant, Dawn Maige, failed to provide a telephone number at which she 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. There is no evidence the hearing notice was returned by the postal service as undeliverable for any reason.

The claimant contacted the administrative law judge after the hearing record was closed and the employer had been excused from the hearing. The claimant indicated that she had made two attempts on or before Thursday, September 22, 2011 to provide a number for the hearing, but had made no attempt since then to provide a telephone number for the hearing set on Wednesday, September 28, 2011.

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 26.8(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.

Iowa Administrative Code section 871 IAC 26.14(7) and (8) provide as follows:

26.14(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.

26.14(8) The presiding officer shall record all communications with late parties. If the presiding officer does not reopen the record, the decision in the contested case shall state the presiding officer's reason for so doing.

The claimant contacted the administrative law judge for the hearing after the record had closed and the employer had been excused. The claimant's failure to, during the three business days that preceded the hearing, to take reasonable steps to provide a telephone number for the hearing leads the administrative law judge to conclude there is no good cause to reopen the record.

DECISION:

The Agency representative's August 26, 2011, reference 01, decision is affirmed. The decision that denied benefits remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs