

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN M KAISER
Claimant

APPEAL NO. 12A-UI-04342-JTT

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

WFA INDUSTRIAL
Employer

**OC: 06/26/11
Claimant: Appellant (1-R)**

Iowa Code Section 96.4(3) – Same Hours and Wages
Iowa Code Section 96.4(3) – Able & Available
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

Brian Kaiser appealed from an unemployment insurance decision dated April 13, 2012, reference 03, that denied benefits effective February 5, 2012 based on an agency conclusion that he was not partially unemployed. A telephone hearing was scheduled for May 9, 2012. Mr. Kaiser did not respond to the hearing notice instructions and did not participate in the hearing. The employer also 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.

This decision is being amended to make record of the claimant's late call on May 10, 2012 and to remand to the Claims Division for further proceedings concerning the claimant's eligibility effective March 11, 2012.

ISSUE:

Decision on the record.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal by notice mailed on April 23, 2012. The appellant, Brian Kaiser, failed to provide a telephone number at which he 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 employer also failed to provide a telephone number at which a 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. There is no evidence either party's hearing notice was returned by the postal service as undeliverable for any reason. The administrative file indicates that neither party participated in the fact-finding interview.

The claimant contacted the Appeals Section on May 10, 2012 to discuss his failure to appear for the hearing on May 9, 2012. The claimant had received proper notice of the hearing through the notice that the Appeals Section mailed to him, which notice was received at the claimant's address of record in a timely manner. The claimant was not home to review the correspondence and did not review the correspondence until the evening of May 9, 2012, after the hearing that had been scheduled for 11:00 a.m. that day. On the evening of May 9, the claimant contacted a Workforce Development number other than the Appeals Section number provided on the notice. On the morning of May 10, the claimant contacted the Appeals Section at a time when the administrative law judge was involved in another hearing. A short while later, the claimant called back and the administrative law judge spoke to the claimant at that time.

The administrative law judge has conducted a careful review of the administrative file to determine whether the unemployment insurance decision should be affirmed. That administrative law judge notes that the claimant's additional claim for benefits was effective February 5, 2012. The administrative law judge notes that fact-finding interview occurred on March 6, 2012 and, for that reason, the fact-finder could only have considered the claimant's benefit eligibility during the period of February 5, 2012 through the benefit week that ended March 10, 2012.

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.

Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record. 871 IAC 26.14(7)(c). Pursuant to the administrative rule, the administrative law judge concluded on May 10, 2012 that the claimant had not provided good cause to reopen 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 with regard to the period of February 5, 2012 through the benefit week that ended March 10, 2012. However, the administrative law judge concludes that the matter should be remanded to the Claims Division to address the claimant's availability for work since *March 11, 2012* and the whether the claimant has been partially unemployed or temporarily unemployed *since March 11, 2012*.

AMENDED DECISION:

The Agency representative's April 13, 2012, reference 03, decision is affirmed for the period of February 5, 2012 through March 10, 2012. The decision that denied benefits for that affected period, based on an agency conclusion that the claimant was not partially unemployed remains in effect. This matter is remanded to the Claims Division to address the claimant's availability for work since *March 11, 2012* and the whether the claimant has been partially unemployed or temporarily unemployed *since March 11, 2012*.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs/css