

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBORAH K CLARK
Claimant

APPEAL NO. 06A-UI-10050-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARSDEN BLDG MAINTANCE
Employer

OC: 01/08/06 R: 02
Claimant: Respondent (1)

871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE

The employer appealed an unemployment insurance decision dated October 5, 2006, reference 02, that concluded the claimant was dismissed under non-disqualifying conditions. A telephone hearing was held on October 30, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. No witnesses participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for misconduct?

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The appellant failed to provide a telephone number where the witness could be reached for the hearing and did not request a postponement of the hearing. There is no evidence the hearing notice was returned by the postal service as undeliverable for any reason.

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 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 re-opened within 15 days after the mailing date of this decision. The request must be mailed to 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 October 5, 2006, reference 02, is affirmed. The claimant was discharged for reasons that are not disqualifying.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

tpn/kjw