

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI	
<b>CONNY L MILES</b> Claimant  <b>FERGUSON ENTERPRISES INC</b> Employer	<b>APPEAL NO. 07A-UI-00118-JTT</b>  <b>ADMINISTRATIVE LAW JUDGE DECISION</b>   <b>OC: 11/12/06 R: 03</b> <b>Claimant: Appellant (1)</b>

871 IAC 26.8(5) - Decision on the Record

**STATEMENT OF THE CASE:**

Conny Miles appealed from an unemployment insurance decision dated December 20, 2006, reference 04, that concluded he was not eligible for benefits for the week ending November 25, 2006 because he had received or was entitled to receive severance pay for the week that was equal to or more than his weekly benefit amount. A telephone hearing was scheduled for January 22, 2007. The appellant provided a telephone number for the hearing, but was not available at that number at the scheduled time of the hearing. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and also did not participate. 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. On January 22, 2006, the appellant, Conny Miles, responded to the hearing notice instructions and provided a telephone number at which he could be reached for the hearing: 319-961-1203. However, at the scheduled time of the hearing, Mr. Miles was not available at the telephone number he provided. The administrative law judge made two attempts to reach Mr. Miles and on both attempts encountered a voicemail box. The administrative law judge left appropriate messages that included the Appeals Section's toll-free number. The Appeals Section staff member who spoke with Mr. Miles on the morning of January 22 told the Mr. Miles to contact the Appeals Section if he did not hear from the Administrative Law Judge within five minutes of the scheduled start of the hearing. As of 1:45 p.m. on January 22, Mr. Miles had not contacted the Appeals Section either in response to that directive or in response to the Administrative Law Judge's messages. The appellant did not request a postponement of the hearing as required by the hearing notice.

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.

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 Agency representatives December 20, 2006, reference 04, decision is affirmed. The decision denying benefits for the week ending November 25, 2006 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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