

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA D BORSHELM
Claimant

APPEAL NO. 100-UI-15087-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VLG INN/BAKERS SQU-VICORP REST
Employer

OC: 06/20/10
Claimant: Appellant (2/R)

Iowa Code Section 96.5(1) - Voluntary Quit
871 IAC 26.8(5) - Decision on the Record

STATEMENT OF THE CASE:

This matter was before the administrative law judge based on an Employment Appeal Board remanded for new hearing in Hearing Number 10B-UI-10776. An appeal hearing had taken place on September 16, 2010 before Administrative Law Judge Debra Wise in Appeal Number 10A-UI-10776-DWT. That hearing occurred as part of the employer's appeal from the July 22, 2010, reference 01 decision that allowed benefits. The employer had participated in the hearing. The claimant did not. Judge Wise reversed the July 22, 2010, reference 01 decision, denied benefits, relieved the employer of liability, and remanded the overpayment issue to the Claims Division. The claimant appealed the decision to the Employment Appeal Board and asserted she did not have notice of the September 16, 2010 appeal hearing. This resulted in the remand for new hearing.

A new telephone hearing was scheduled under the present case number for December 10, 2010. The claimant did not respond to the hearing notice instructions and did not participate in the hearing. The employer was available for the hearing through Tom Kuiper of TALX and Mani Vi, General Manager. Based on the claimant's failure to participate in the rescheduled hearing, the administrative file, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision. The administrative law judge specifically adopts the decision entered on September 21, 2010 by administrative law judge Debra Wise Appeal Number 10A-UI-10776-DWT in its entirety, along with the hearing record made on September 16, 2010.

ISSUE:

Decision on the record.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal by notice mailed on November 16, 2010. The new hearing was scheduled solely because the claimant asserted lack of notice with regard to the September 16, 2010 appeal hearing in Appeal Number 10A-UI-10776-DWT. The claimant failed to provide a telephone number at which she

could be reached for the rescheduled hearing and did not participate in the rescheduled 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 administrative law judge has conducted a careful review of the administrative file to determine whether the unemployment insurance decision should be affirmed. The administrative law judge hereby adopts the findings of fact as set forth decision in the September 21, 2010 decision entered by administrative law judge Debra Wise Appeal Number 10A-UI-10776-DWT.

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. The administrative law judge hereby adopts the reasoning and conclusions of law as set forth decision in the September 21, 2010 decision entered by administrative law judge Debra Wise Appeal Number 10A-UI-10776-DWT.

DECISION:

The Claims Division representative's July 22, 2010, reference 01, decision is reversed. The administrative law judge hereby adopts the decision in the September 21, 2010 decision entered by administrative law judge Debra Wise Appeal Number 10A-UI-10776-DWT. The claimant voluntarily quit her employment on September 10, 2009 for reasons that do not qualify her to receive unemployment insurance benefits. The claimant is disqualified for receiving unemployment insurance benefits as of September 10, 2009. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is

otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is **Remanded** to the Claims Section to determine.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css