

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSE GOMEZ**  
Claimant

**APPEAL NO: 11A-UI-11107-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TRINITY STRUCTURAL TOWERS INC**  
Employer

**OC: 03/20/11**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Jose Gomez (claimant) appealed an unemployment insurance decision dated August 19, 2011, reference 03, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Trinity Structural Towers, Inc. (employer) without good cause attributable to the employer. A hearing was scheduled for October 10, 2011. The appellant 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.

**ISSUE:**

The issue is whether the unemployment insurance decision should be affirmed.

**FINDINGS OF FACT:**

The parties were properly notified of the scheduled hearing on this appeal. The appellant was not available when called at the number provided and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. The number was called two times and messages were left for the claimant in Spanish each time. He did not call the Appeals Section after that.

The administrative law judge has conducted a careful review of the available documents in 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. If the appellant does not present any evidence at the appeal hearing, the administrative law judge has no grounds in law or fact to reverse the initial decision.

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 unemployment insurance decision dated August 19, 2011, reference 03, is affirmed. The decision disqualifying the claimant from receiving benefits 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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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/css