

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. Tyson Fresh Meats responded to the hearing notice instructions by providing a telephone at which employer representative David Duncan could be reached for the hearing: 319-236-9350. At the scheduled time of the hearing, the administrative law judge attempted to contact Mr. Duncan at the designated number and made contact with Mr. Duncan's voice mailbox. The message indicated Mr. Duncan was unavailable and provided the option of transferring to a person who was taking calls for Mr. Duncan. The administrative law judge transferred to another member of the personnel department, who advised that Mr. Duncan was in a meeting in his office. The administrative law judge advised that Mr. Duncan was scheduled to participate in a hearing regarding the claimant, that the judge preferred to have Mr. Duncan's participation, and that the hearing would proceed as scheduled. The personnel representative contacted Mr. Duncan and returned with the message that Mr. Duncan was not available. The administrative law judge provided the Appeals Bureau's toll free telephone number. The employer had not requested 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 unemployment insurance decision dated September 6, 2005, reference 01, is affirmed. The decision allowing 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.

jt/pjs