

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BILLY J MCGONIGLE**  
Claimant

**APPEAL NO: 12A-UI-06416-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**L A LEASING INC/SEDONA STAFFING**  
Employer

**OC: 04/08/12**  
**Claimant: Appellant (1)**

Section 96.5-1-j – Temporary Employment  
Section 17A.12-3 – Non-appearance of Party  
871 IAC 26.8(5) – Decision on the Record

**STATEMENT OF THE CASE:**

An appeal was filed from a representative's unemployment insurance decision dated May 25, 2012 (reference 01) that concluded Billy J. McGonigle (claimant/appellant) was not eligible for unemployment insurance benefits after a separation from employment from L. A. Leasing, Inc. / Sedona Staffing (employer/respondent). Notices of hearing were mailed to the parties' last-known addresses of record for a telephone hearing to be held at 1:00 p.m. on June 26, 2012. The claimant/appellant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. The employer responded to the hearing notice and indicated that Chad Baker would participate as the employer's representative with one other witness. When the administrative law judge contacted the employer for the hearing, Mr. Baker agreed that the administrative law judge should make a determination based upon a review of the available information. Based on the appellant's failure to participate in the hearing, the available information, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

**ISSUE:**

Should the representative's decision be affirmed on a basis of a review of the available information?

**OUTCOME:**

Representative's decision affirmed; benefits denied.

**FINDINGS OF FACT:**

The claimant did not receive his notice of hearing for the scheduled hearing; the notice was mailed to the claimant's address of record, 106½ W. Fayette St., Manchester IA 52057-1516 on June 6, 2012, however, on or about June 22 it was returned to the Appeals Section. A United States Postal Service notification was affixed to the envelope stating, "RETURN TO SENDER,

NOT DELIVERABLE AS ADDRESSED, UNABLE TO FORWARD.” The given address of record is the same address as appears on the claimant’s appeal letter filed on May 31, 2012.

When the notice was returned from the postal service, the Appeals Section attempted to contact the claimant by telephone at his phone number of record; however, this number was no longer in service. In the claimant’s appeal letter three additional phone numbers were provided; however, when those numbers were attempted on June 25 and June 26, only one of the numbers was in service. The number which was in service was attempted three times each day, but there was no answer and no answering machine upon which to leave a message.

The administrative law judge has concluded that at this point there is no reasonable alternative but to proceed with a review of the appeal. The administrative law judge has conducted a careful review of the available information to determine whether the unemployment insurance decision should be affirmed.

**REASONING AND CONCLUSIONS OF LAW:**

The Iowa Administrative Procedures Act at Iowa Code § 17A.12-3 provides in pertinent part:

If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and make a decision in the absence of the party. ... If a decision is rendered against a party who failed to appear for the hearing and the presiding officer is timely requested by that party to vacate the decision for good cause, the time for initiating a further appeal is stayed pending a determination by the presiding officer to grant or deny the request. If adequate reasons are provided showing good cause for the party’s failure to appear, the presiding officer shall vacate the decision and, after proper service of notice, conduct another evidentiary hearing. If adequate reasons are not provided showing good cause for the party’s failure to appear, the presiding officer shall deny the motion to vacate.

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 the available information and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed. 871 IAC 26.8(5).

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, or if the claimant does not timely receive this decision, within 15 days of when the claimant does learn of this decision.. The written request should be mailed to the administrative law judge at the address listed at the beginning of this decision.

**DECISION:**

The representative's unemployment insurance decision dated May 25, 2012 (reference 01) 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, or if this decision is not timely received, within 15 days of learning of this decision.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs