

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY S WYLAND

Claimant

APPEAL NO. 09A-UI-04705-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REGAL MANORS OF ONAWA INC

Employer

**Original Claim: 03/08/09
Claimant: Respondent (2)**

Section 96.4(3) – Able and Available
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

An appeal was filed from an unemployment insurance decision dated March 18, 2009, reference 01, that concluded Mary Wyland was available for work. The decision also held that the employer would not be relieved of benefit charges. A telephone hearing was scheduled for April 21, 2009. Neither party responded to the notice of 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:

At issue in this matter is whether the decision previously entered should be affirmed.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The appellant failed to provide a telephone number at which a representative could be reached for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

Neither the claimant nor the employer participated in the fact-finding interview in this matter. The employer indicated in its protest that the claimant was still employed part time. The employer indicated in its letter of appeal that the claimant had always been a part-time employee and had not suffered any reduction in work hours.

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 the evidence in the record and concludes that the unemployment insurance decision previously entered in this case should be reversed. The claimant had the burden of proving that she is available for work within the meaning of the law. See Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). The only evidence in the record is that she is and has always been a part-time employee with Regal Manor of Onawa, Inc. As such, she is not entitled to job insurance benefits. See 871 IAC 24.23(26).

Pursuant to the rule, the appellant must make a written request to the administrative law judge within 15 days after the mailing date of this decision asking that the hearing be reopened. 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 March 18, 2009, reference 01, is reversed. The decision holding the claimant qualified for benefits is reversed. This decision will become final unless a written request establishing good cause to reopen the record is made to the administrative law judge or an appeal is filed with the Employment Appeal Board within 15 days of the date of this decision.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw