

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HONG T NGUYEN
Claimant

APPEAL NO: 11A-UI-08960-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOLY SPIRIT RETIREMENT HOME
Employer

**OC: 04/17/11
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving
§ 17A.12-3 – Non-appearance of Party
871 IAC 26.8(5) – Decision on the Record
871 IAC 26.14(7) – Late Call

STATEMENT OF THE CASE:

An appeal was filed from a representative's unemployment insurance decision dated June 30, 2011 (reference 04) that concluded Hong T. Nguyen (claimant/appellant) was not eligible for unemployment insurance benefits after a separation from employment from Holy Spirit Retirement Home (employer/respondent). A telephone hearing was scheduled for 2:00 p.m. on August 24, 2011. The claimant received the hearing notice and responded by calling the Appeals Section on August 16, 2011. She indicated that she would be available at the scheduled time for the hearing at a specified telephone number. On the morning of August 24, she again contacted the Appeals Section to indicate she had a meeting at school that afternoon, but after discussion with a clerk confirmed that she understood she would be available for the hearing at 2:00 p.m. However, when the administrative law judge called the claimant's number at the scheduled time for the hearing, the claimant was not available. Therefore, the claimant did not participate in the hearing. The employer responded to the hearing notice and indicated that Pat Tomscha would participate as the employer's representative with three other witnesses. When the administrative law judge contacted the employer for the hearing, Mr. Tomscha agreed that the administrative law judge should make a determination based upon a review of the available information. The administrative law judge considered the record closed at 2:19 p.m. At 3:02 p.m., the claimant called the Appeals Section and requested that the record be reopened. 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?

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The claimant received the hearing notice prior to the August 24, 2011 hearing. The instructions inform the parties that they are to be available at the specified time for the hearing, and that if they cannot be reached at the time of the hearing at the number they provided, the judge may decide the case on the basis of other available evidence. The reason the claimant was not available when the administrative law judge called for the hearing was that she was at a meeting at school for her daughter regarding pictures and book fees, and the meeting went longer than she had anticipated.

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 § 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 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

At issue is a request to reopen the record made after the hearing had concluded. The request to reopen the record is denied because the party making the request failed to participate by reading and following the instructions on the hearing notice.

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. 871 IAC 25.8(5).

DECISION:

The unemployment insurance decision dated June 30, 2011 (reference 04) is affirmed. The decision disqualifying the claimant from receiving benefits remains in effect.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css