

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TONYA M ADAMS
Claimant

APPEAL NO. 06A-UI-09121-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACCESS DIRECT TELEMARKETING INC
Employer

OC: 07/30/06 R: 03
Claimant: Appellant (1)

Section 17A.12-3 – Non-appearance of a Party
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

An appeal was filed from an unemployment insurance decision dated September 1, 2006, reference 03, that concluded the claimant was discharged for work-connected misconduct. A telephone hearing was scheduled for September 26, 2006. The claimant did not participate in the hearing. Alyce Smolsky participated in the hearing on behalf of the employer and agreed that a decision could be made based on the information in the administrative file. Based on the claimant's failure to participate in the hearing, the administrative file, and the law, the following findings of fact, reasoning and conclusions of law and decision are entered.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The claimant failed to provide a telephone number at which she 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. After the hearing had concluded, the claimant called the Appeals Section at 11:43 a.m. and stated she was waiting for a call from someone with the Appeal Section to call her even though she had not called in to advise anyone about what number she would be at. She was calling from her current workplace and was asked by the Administrative Law Judge to look at her correspondence at home and to call back between 4:30 and 5:00 p.m. on September 27, 2006, to verify whether she did or did not receive the hearing notice. She did not call back.

A careful review of the information in the administrative file has been conducted to determine whether the unemployment insurance decision should be affirmed.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedures Act section 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.

The unemployment insurance rules specifically state that failure to read or following the instruction on the hearing notice shall not constitute good cause for reopening the record. 871 IAC 26.14(7). The claimant did not follow the instructions on the hearing notice to provide a telephone number where she could be reached for the hearing. She was given the opportunity to present evidence supporting her request to reopen the hearing but did not follow through as requested.

The administrative law judge has carefully reviewed the information in the administrative file in the record and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed.

DECISION:

The unemployment insurance decision dated September 1, 2006, reference 03, is affirmed. The decision disqualifying the claimant from receiving benefits remains in effect.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/cs