

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DESHAWN R BYRD
Claimant

APPEAL NO. 15R-UCFE-00026-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

US POSTAL SERVICE
Employer

OC: 05/10/15
Claimant: Appellant (2)

Iowa Code Section 96.5(2)(a) - Discharge
871 IAC 26.8(5) - Decision on the Record

STATEMENT OF THE CASE:

This matter is before the administrative law judge based on the Employment Appeal Board's remand in Hearing Number 15B-UCFE-00020. Appeal proceedings began in this matter through the claimant's appeal of the June 1, 2015, reference 01, decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on an Agency conclusion that the claimant had been placed on disciplinary suspension on May 6, 2015 for violation of company rules. Upon the Employment Appeal Board's remand, the matter was set for a new appeal hearing on September 8, 2015. The parties were properly notified of the hearing by notice mailed on August 24, 2015 to the parties' last-known addresses of record. Neither party responded to the hearing notice instructions to provide a telephone number for the new appeal hearing. The administrative law judge took official notice of the agency's administrative record (Clear2There Hearing Control Screen) that document the parties' failure to provide a telephone number for the hearing. Based on the parties' 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:

Whether the claimant was suspended from the employment for a reason that disqualifies him for benefits or that relieves the employer of liability for benefits.

FINDINGS OF FACT:

The claimant filed a timely appeal from the June 1, 2015, reference 01, decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on an Agency conclusion that the claimant had been placed on disciplinary suspension on May 6, 2015 for violation of company rules. On June 30, 2015, Administrative Law Judge Blair Bennett (ALJ Bennett) held an appeal hearing in which both parties participated. See Appeal Number 15A-UCFE-00020-B2T. On July 1, 2015, ALJ Bennett entered a decision that concluded the claimant was suspended for no disqualifying reason, that the claimant was eligible for benefits provided the claimant met all other eligibility requirements, and that the employer's account could be charged for benefits. The employer filed a timely appeal from ALJ

Bennett's decision. The Employment Appeal Board remanded the matter for further development of the record. See hearing number 15B-UCFE-00020. The Employment Appeal Board did not vacate ALJ Bennett's decision. The parties were properly notified of the new appeal hearing set for 1:00 p.m. on September 8, 2015. The parties failed to provide a telephone number at which the parties 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. There is no evidence the hearing notice sent to either party was returned by the Postal Service as undeliverable for any reason.

REASONING AND CONCLUSIONS OF LAW:

Iowa Admin. Code r. 871-26.8(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 administrative record, referenced hereinabove. In light of the parties' failure to participate in the new appeal hearing, and in light of the Employment Appeal Boards remand of the matter without vacating ALJ Bennett's decision in the matter, the administrative law judge concludes it is appropriate to adopt the decision entered by ALJ Bennett. Accordingly, the administrative law judge concludes that the claimant was suspended for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

Pursuant to the rule, the employer 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 employer from participating in the hearing at its scheduled time.

DECISION:

The June 1, 2015, reference 01, decision is reversed. The July 1, 2015, decision in appeal number 15A-UCFE-00020-B2T remains in effect. The claimant is eligible for benefits in connection with the disciplinary suspension provided he meets all other eligibility requirements. The employer's account may be charged. 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css