

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARCUS J LANGE
Claimant

APPEAL NO. 12A-UI-03599-L

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICANA LLC
Employer

OC: 02/26/12
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

An appeal was filed from an unemployment insurance decision dated April 4, 2012 (reference 02) that allowed benefits. A hearing was scheduled for May 9, 2012, at 10:00 a.m., in person, at 150 Des Moines Street in Des Moines, Iowa. The appellant did not respond to the hearing notice instructions. 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:

The issue is whether the representative's decision should be affirmed.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The appellant failed to appear as directed by the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The employer called the Appeals Bureau at 12:02 p.m. and left a message that the 9:00 a.m. hearing with Judge Anderson ran long so that was why it did not appear for this hearing. The claimant in Judge Anderson's hearing participated in person and the employer participated by phone. Judge Anderson got done with the hearing, packed up, and left the 150 Des Moines Street office at 9:41 am according to the reception log sheet. This ALJ was in the next hearing room in a 9:00 a.m. in-person hearing that ran over until almost 10:15. When the 10:00 a.m. hearing was finally called at 10:15 a.m., the employer had not appeared but the claimant was waiting. The ALJ asked the claimant how far the employer's office was from 150 Des Moines Street and he said 13th & Locust Streets, which is consistent with the hearing notice and is no more than 10 to 15 minutes distant even considering downtown traffic and parking. Since 30 minutes or more had passed since Judge Anderson had ended his 9 a.m. hearing with the same employer, and 15 minutes had elapsed since this hearing was scheduled to begin, the employer was considered to have failed to appear and the record was closed.

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:

The first issue in this case is whether the employer's request to reopen the hearing should be granted or denied.

871 IAC 26.14(6) provides:

(6) In the event that one or more parties which have received notice for a contested case hearing fail to appear at the time and place of an in-person hearing, the presiding officer may proceed with the hearing.

a. If an absent party arrives for an in-person hearing while the hearing is in session, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If an absent party arrives for an in-person hearing after the record has been closed and after any party which had participated in the hearing has departed, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire ex parte as to the reason the party was late. For good cause shown, the presiding officer shall cause notice of hearing to be issued to all parties of record and reopen the record. The record shall not be reopened if the presiding officer does not find a good cause for the party's late arrival.

The first time the employer reported for the May 9, 2012 in-person hearing was after the hearing record had been closed. Although the employer may have intended to participate in the hearing, it failed to read or follow the hearing notice instructions and did not report to the specified location for the hearing on a timely basis. The employer did not attempt to contact the ALJ until two hours after the hearing was set to begin and gave a false reason for the failure to appear. Thus, it did not establish good cause to reopen the hearing and the employer's request to reopen the hearing is denied.

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 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.

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. 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 April 4, 2012 (reference 02) is affirmed. The representative's decision remains in effect.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw