

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LARRY HOCH**  
Claimant

**APPEAL NO: 11A-UI-06642-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LOWE'S HOME CENTERS INC**  
Employer

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

Iowa Code § 96.5(2)(a) - Discharge for Misconduct  
Iowa Code § 17A.12-3 - Non-Appearance of Party  
871 IAC 25.8(5) - Decision on the Record

**STATEMENT OF THE CASE:**

An appeal was filed from an unemployment insurance decision dated May 9, 2011, reference 01, that concluded Larry Hoch (claimant) was eligible for unemployment insurance benefits after a separation from employment from Lowe's Home Centers, Inc. (employer). Notices of hearing were sent to both parties' last-known addresses of record for a telephone hearing to be held at 10:00 a.m. on June 15, 2011. The appellant did not participate in the 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:**

The issue is whether the unemployment insurance decision previously entered in this case should be affirmed.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was available to participate in the hearing. The employer/appellant provided a witness name and number for the hearing but that witness was not available. Assistant Manager Rob Dillinger knew nothing about the hearing so elected not to participate.

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.

*<http://www.iowaworkforce.org/ui/appeals/index.html>*

(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 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). If the appellant does not present any evidence at the appeal hearing, the administrative law judge has no grounds in law or fact to reverse the initial decision.

**DECISION:**

The unemployment insurance decision dated May 9, 2011, reference 01, is affirmed. The decision holding the claimant qualified for benefits remains in effect.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/css