

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEATHER J LECLERE
Claimant

APPEAL NO. 08A-UI-06407-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWEST MFG SYSTEMS INC
Employer

OC: 06/08/08 R: 03
Claimant: Respondent (1)

Section 96.6-2 – Untimely Protest
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

An appeal was filed from an unemployment decision dated July 11, 2008, reference 02, that concluded the employer's protest of the claim of Heather LeClere was not timely. A telephone hearing was scheduled for July 28, 2008. The employer, the appellant herein, did not respond to the notice of hearing. Based upon 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 in this matter is whether the decision previously entered should be affirmed.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing in this appeal. The appellant failed to provide a telephone number at which the employer 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.

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.

(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 evidence in the record and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed.

DECISION:

The representative's decision dated July 11, 2008, reference 02, is hereby affirmed. The employer's protest was not timely. The claimant is eligible to receive unemployment insurance benefits as long as she meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

css/css