

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LYNA R KAIN
Claimant

APPEAL NO. 12A-UI-09715-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SIXTH AVE HOTEL PARTNERSHIP
Employer

OC: 07/08/12
Claimant: Appellant (1)

Section 96.5(1) – Quit
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

An appeal was filed from an unemployment insurance decision dated July 30, 2012, reference 01, that concluded the claimant was disqualified for unemployment benefits effective July 29, 2012. A telephone hearing was scheduled for September 5, 2012. The appellant did not participate in the hearing. Based on the appellant's failure to participate in the hearing, the available 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 claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

The claimant filed the appeal in this case. The notice of the hearing states the Appeal Section does not recommend the use of cell phones to participate in the hearing. The appellant in this hearing elected to use a cell phone in spite of the recommendation. The parties were advised by the administrative law judge prior to the hearing that if the connection was lost during the hearing, the judge would not call back until the Appeals Section was contacted with a new phone number or an assurance the cell phone was working again. The claimant lost the connection on the cell phone at 2:10 p.m. By the time the record was closed at 2:29 p.m., the appellant had not called back.

The administrative law judge does not know if the claimant lost the connection due to problems with her cell phone, or whether she declined to participate in the hearing. She was seeking explanations as to why she had been denied, and wanting to give an explanation, which the judge asked her to wait until the opening statement had been given and the parties sworn in. At that time, the appellant again asked why she was not getting unemployment benefits. The judge attempted another explanation of the reason for her separation and denial of unemployment benefits, but by that time the appellant had lost the connection.

The administrative law judge has conducted a careful review of the available 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 evidence in the record and the available administrative file and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed.

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 July 30, 2012, reference 01, is affirmed. The decision finding the claimant disqualified for benefits remains in effect. 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.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw