

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PERCY SMITH JR
Claimant

APPEAL NO. 08A-UI-07183-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARSDEN BLDG MAINTENANCE LLC
Employer

OC: 07/13/08 R: 02
Claimant: Appellant (1)

Section 96.5-2-a – Discharge
Section 17A.12-3 – Non-appearance of a Party
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

An appeal was filed from an unemployment insurance decision dated August 6, 2008, reference 01, that concluded the claimant was discharged for work-connected misconduct. A telephone hearing was scheduled for August 25, 2008. The claimant did not participate in the hearing. Jeffrey Allen participated in the hearing on behalf of the employer and agreed that a decision could be made based on the information in the administrative file. Based on the claimant's failure to participate in the hearing, the administrative file, and the law, the following findings of fact, reasoning and conclusions of law, and decision are entered.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The claimant provided a telephone number at which he 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. He was not available when he was called at the date and time of the hearing on August 25, 2008. The claimant called the appeals bureau at 1:15 p.m. He explained that his neighbor had come over at about "seven something" in the morning and asked him to help with a job and he did not have time to call to reschedule.

A careful review of the information in the administrative file has been conducted to determine whether the unemployment insurance decision should be affirmed.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedures Act Section 17A.12-3 provides in pertinent part:

If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and make a decision in the absence of the party. ... If a decision is rendered against a party who failed to appear for the hearing and the presiding officer is timely requested by that party to vacate the decision for good cause, the time for initiating a further appeal is stayed pending a determination by the presiding officer to grant or deny the request. If adequate reasons are provided showing good cause for the party's failure to appear, the

presiding officer shall vacate the decision and, after proper service of notice, conduct another evidentiary hearing. If adequate reasons are not provided showing good cause for the party's failure to appear, the presiding officer shall deny the motion to vacate.

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 claimant has not shown an emergency situation or other good cause for his failure to participate in the hearing. If what he said is true, he deliberately chose not to participate in a hearing he requested, which had been scheduled since August 11, based on a last-minute request from a neighbor to help him with a job. He did not call and request a postponement and it is impossible to imagine that he was required to leave so quickly that he did not have time to pick up the phone and call. The administrative law judge has carefully reviewed the information in the administrative file in the record and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed.

DECISION:

The unemployment insurance decision dated August 6, 2008, reference 01, is affirmed. The decision disqualifying the claimant from receiving 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.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw