

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN R CRAFT
Claimant

APPEAL NO. 12A-UI-08476-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 02/28/10
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Susan Craft appealed from an unemployment insurance decision dated March 14, 2011, reference 03, that denied benefits based on an agency conclusion that she had voluntarily quit employment without good cause attributable to the employer on January 17, 2011. A telephone hearing was scheduled for August 23, 2012. Ms. Craft provided a telephone number for the hearing, but was not available at that number at the scheduled time of the hearing. The employer was available for the hearing through Jim Cole. 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:

Decision on the record.

FINDINGS OF FACT:

This matter was initially set for a consolidated hearing on August 8, 2012. The companion overpayment case is Appeal Number 12A-UI-08477-JTT. Timeliness of appeal is an issue in both cases. Ms. Craft appeared by telephone at the time set for the hearing on August 8. Employer representative Jim Cole also appeared. Both parties indicated on August 8 that they were lacking some or all of the exhibits necessary to address the timeliness issue. In addition, Ms. Craft had submitted an appeal letter that referenced hospitalization as the basis for filing a late appeal from the overpayment decision, but had not submitted any medical documentation. The administrative law judge advised the parties that the August 8 hearing would be postponed so that both parties could be provided with the appropriate exhibits regarding timeliness and so that Ms. Craft would have the opportunity to obtain and submit medical documentation concerning the delay in filing the appeal from the overpayment decision.

The administrative law judge confirmed the address of record for Ms. Craft and for the employer on August 8.

On August 9, 2012, the Appeals Bureau mailed notice to both parties of the new hearing time on August 23, 2012. The Appeals Bureau mailed two hearing notices, one for each case, to Ms. Craft at the address of record she had confirmed on August 8. Ms. Craft had provided a telephone number for the August 8 proceeding: 319-529-8473. After providing that number as the one at which she could be reached for the hearing, Ms. Craft did not provide a different number. On the morning of August 23, 2012, the administrative law judge attempted to call Ms. Craft to confirm she had received the necessary exhibits and to take appropriate steps to get the exhibits to her if she still had not received them. The administrative law judge tried twice to reach Ms. Craft at the number she had previously provided. On both attempts, the administrative law judge eventually encountered a message that indicated the number was temporarily out of service. At the time set for the August 23 hearing, the administrative law judge made two attempts to reach Ms. Craft at the number she had previously provided and encountered the same message that the line was temporarily out of service. The administrative law judge left the record open until 15 minutes after the scheduled start of the hearing, with the employer standing by, but Ms. Craft did not contact the Appeals Bureau to indicate her availability for the hearing. As of the entry of this decision at 4:30 p.m. on August 23, the claimant has still not contacted the Appeals Section to make herself available for the hearing scheduled for 3:45 p.m.

Ms. Craft did not request a postponement of the August 23, 2012, hearing as required by the hearing notice. Neither hearing notice mailed to Ms. Craft's address of record on August 9, 2012 has been returned to the Appeals Bureau as undeliverable for any reason.

The administrative law judge has conducted a careful review of the administrative file to determine whether the unemployment insurance decision should be affirmed. Ms. Craft's appeal from the March 14, 2011, reference 03 disqualification is on its face late. The deadline for appealing the disqualification decision was March 24, 2011. Ms. Craft's faxed appeal indicates on its face that it was faxed on July 15, 2012, more than 15 months after the deadline for appeal.

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

In the absence of testimony and other evidence from Ms. Craft to demonstrate good cause to treat her late appeal as a timely appeal, the administrative law judge would not have jurisdiction to disturb the lower decision that disqualified Ms. Craft for unemployment insurance benefits.

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 Agency representatives March 14, 2011, reference 03, decision is affirmed. The decision that denied benefits based on a voluntarily quit employment without good cause attributable to the employer on January 17, 2011 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs