

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WAYNE E NEWSON
Claimant

APPEAL NO. 09A-UI-06314-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERISTAR CASINO CO BLUFFS INC
Employer

**Original Claim: 03/08/09
Claimant: Appellant (1)**

Iowa Code section 96.5(2)(a) – Discharge for Misconduct
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

Wayne Newson appealed from an unemployment insurance decision dated March 26, 2009, reference 01, that denied benefits. A telephone hearing was scheduled for June 10, 2009. The appellant 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 Bill Stasek of TALX/Unemployment Services and Emily Jones of Ameristar Casino Council Bluffs, Inc.

The claimant contacted Appeals Section at 11:10 a.m., an hour and ten minutes after the scheduled start of the hearing and 54 minutes after the hearing record had closed. The claimant indicated that he had missed the hearing because he had not charged his phone. The claimant asserted he had received a hearing notice that set the hearing for June 11, 2009. That assertion was not credible and is contradicted by the administrative file materials. The administrative law judge concluded there was not good cause to reopen the record and advised the claimant of his right of appeal.

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:

The parties were properly notified of the scheduled hearing on this appeal. The appellant, Wayne Newson, responded to the hearing notice instructions and provided a telephone number at which he could be reached for the hearing: 402-612-4721. However, at the scheduled time of the hearing, the appellant was not available at the telephone number he provided. The appellant did not request a postponement of the hearing as required by the hearing notice.

This matter was originally set for hearing on May 19, 2009. On April 27, Mr. Newson provided a telephone number at which he could be reached for the hearing: 402-612-4721. At the time of the hearing, Mr. Newson asserted he had not received exhibits that the Appeals Section mailed to him on April 23, 2009. The hearing was rescheduled to June 10, 2009. Notice was mailed to the parties on May 20, 2009. The exhibits were re-mailed to Mr. Newson by certified mail with a copy of the hearing notice for the June 10, 2009 hearing. At the time of the rescheduled hearing, the administrative law judge made two attempts to reach Mr. Newson and left two messages on Mr. Newson's answering machine. The hearing record closed 16 minutes after the scheduled start of the hearing. As of the entry of this decision, one hour after the scheduled time of the hearing, Mr. Newson has not made contact with the Appeals Section.

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 evidence in the record 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 Agency representative's March 26, 2009, reference 01, decision 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw