

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHANIE J PROSS
Claimant

APPEAL NO. 13A-UI-01043-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BURGER KING CORPORATION
Employer

OC: 12/16/12
Claimant: Respondent (1)

871 IAC 26.9(8) – Sanctions for Failure to Respond to Discovery Requests

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 18, 2013, reference 03, decision that allowed benefits. After due notice was issued, a hearing on whether to impose sanctions was held on May 8, 2013. The claimant did participate and was represented by Joseph G Basque, Attorney at Law. The employer did participate through Shawn Thayer, District Manager.

ISSUE:

Should sanctions be imposed upon the employer for their failure to respond to discovery requests?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer was mailed and received discovery requests in the form requests for production and interrogatories by claimant's attorney on February 13, 2013. The employer never sent any response to the claimant's attorney Mr. Basque. IWD scheduled a hearing on the separation issues, but continued the hearing due to Mr. Basque's request because the employer never responded to his discovery requests. After numerous requests from Mr. Basque on behalf of his client, IWD mailed to the employer on April 17, 2013 a final notification giving the employer ten additional days to respond to the claimant's basic discovery requests. After receiving no response at all in any form from the employer, Mr. Basque requested that sanctions be issued against the employer for their failure to provide him with any type of response to his discovery request.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge has reviewed the records and files herein and concludes that the claimant's request for sanctions should be granted.

871 IAC 26.9(8) provides in relevant part:

Upon application by any party or upon the presiding officer's own motion, the presiding officer may impose sanctions for the failure to make discovery; however, sanctions shall not be imposed without prior specific notice from the presiding officer of the contemplated sanction, opportunity to be heard, and, if necessary, further opportunity to cure its failure. The sanctions may include the following:

- e. The dismissal of the party's appeal.

The record establishes that on at least two separate occasions discovery requests were mailed to the employer. The employer has made no response at all. The employer was sent a final warning letter on April 17, 2013 that warned them their failure to respond could result in the dismissal of their appeal. Due to the employer's complete failure to respond to the claimant's discovery requests, the administrative law judge concludes that their appeal shall be dismissed. The fact-finding representative's decision shall remain in full force and effect. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The appeal from the January 18, 2013 reference 03, decision is dismissed.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css