

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REESE E CHATTERTON

Claimant

APPEAL NO. 09A-UI-06919-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LABOR READY MIDWEST INC

Employer

OC: 04/10/11

Claimant: Respondent (1)

Section 96.5(1)(j) - Temporary Employment Separation
871 IAC 26.8(5) - Decision on the Record

STATEMENT OF THE CASE:

The employer appealed from an unemployment insurance decision dated May 10, 2011, reference 01, that allowed benefits in connection with a November 27, 2010 separation. A telephone hearing was scheduled for June 21, 2011. The employer/appellant provided a telephone number for the hearing, but was not available at that number at the scheduled time of the hearing. The claimant did not respond to the hearing notice instructions to provide a number for the hearing and did not participate. 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 hearing was scheduled for 2:00 p.m. on June 21, 2011. The appellant, Labor Ready Midwest, Inc., responded to the hearing notice instructions and provided a telephone number at which a representative could be reached for the hearing: Michael Nicolossi at 712-322-4477. However, at the scheduled time of the hearing, the employer representative was not available at the telephone number the employer had provided.

The Appeals Section made two attempts to reach the employer. At 2:00 p.m., the Appeals Section staff attempted to contact the employer representative to let him know that the administrative law judge was detained in the hearing, but would get to him as soon as possible. At 2:16 p.m., the administrative law judge attempted to reach the employer representative at the number provided by the employer. Both the Appeals Section representative and the administrative law judge were routed to the employer's answering service, where each left a message for the employer. When the administrative law judge spoke to that service, the service representative indicated it was not possible to connect the administrative law judge with the employer representative, but only possible to leave a message that would be forwarded to the

branch. The administrative law judge left a message with the answering service that the employer representative would need to contact the administrative law judge prior to 2:30 p.m. to avoid having an adverse decision entered based on the contents of the administrative file.

The administrative law judge heard nothing further until 3:55 p.m., when the administrative law judge received a message from the Appeals Section staff. The answering service had just called to say that the Council Bluffs branch would be contacting the administrative law judge shortly. The answering service indicated that the branch had been experiencing a large number of calls and that that was why the Appeal Section's calls were being routed to the answering service. The administrative law judge waited until 5:00 p.m., but no such contact came. Appeals Section staff continued to be available to receive and forward the employer's call.

The employer/appellant did not request a postponement of the hearing as required by the hearing notice.

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.

None of the events referenced above explain why the employer representative did not take reasonable and timely steps to contact the administrative law judge to participate in the hearing after the employer representative did not have contact with the administrative law judge at the 2:00 p.m. scheduled start of the hearing.

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 May 10, 2011, reference 01, decision is affirmed. The decision allowing benefits in connection with a November 27, 2010 separation 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