

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JIM W WORKMAN

Claimant

APPEAL NO. 07A-UI-05118-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER TEMPORARY SERVICES

Employer

**OC: 04/08/07 R: 01
Claimant: Respondent (1-R)**

871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

An appeal was filed from a representative's decision dated May 7, 2007, reference 02, which concluded Jim Workman was separated from employment for no disqualifying reason. A telephone hearing was scheduled for 4:00 p.m. on June 6, 2007. The employer, the appellant herein, did not respond to the notice of hearing until approximately 4:13 p.m. Because the employer failed to follow the instructions for participating as noted on the hearing notice, the administrative law judge declined to reopen the record. 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:

At issue in this matter is whether the decision previously entered should be affirmed.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The appellant failed to provide a telephone number at which its witness 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.

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 the evidence in the record and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed. However, the employer's submissions indicate that Mr. Workman became separated from an assignment on or about May 4, 2007. Workforce Development has not adjudicated the May separation. Therefore, the matter shall be remanded to Claims for an investigation and determination regarding Mr. Workman's May 4, 2007 separation from an assignment with NSK.

DECISION:

The unemployment insurance decision dated May 7, 2007, reference 02, is affirmed. The decision holding the claimant qualified for benefits remains in effect. This decision will become final unless a written appeal is filed with the Employment Appeal Board within 15 days of the date of this decision. This matter is remanded to Claims to adjudicate Mr. Workman's May 4, 2007 separation from employment.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs