

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARLEY C MCCORD
Claimant

APPEAL NO. 12A-UI-10011-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COBIA COMMUNITY SERVICES LLC
Employer

**OC: 03/04/12
Claimant: Appellant (1)**

Section 96.4(3) – Able & Available
Section 96.4(3) – Same Hours & Wages
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

Carly McCord appealed from an unemployment insurance decision dated August 16, 2012, reference 02, that denied benefits effective March 4, 2012 based on an agency conclusion that she was not partially unemployed from Cobia Community Services. A telephone hearing was scheduled for September 11, 2012. The hearing was consolidated with appeal number 12A-UI-10010-JTT Ms. McCord provided a telephone number for the hearing, but was not available at that number at the scheduled time of the hearing. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing. 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, Carly McCord, responded to the hearing notice instructions and provided a telephone number at which she could be reached for the hearing: 402-216-6480. However, at the scheduled time of the hearing, Ms. McCord was not available at the telephone number she provided. Ms. McCord did not request a postponement of the hearing as required by the hearing notice. The administrative law judge made two attempts to reach the claimant for the hearing. These two attempts were nine minutes apart. In connection with each attempt, the administrative law judge left an appropriate message that included the toll-free number Ms. McCord could call to indicate her availability for the hearing.

On September 14, 2012, *three days after the hearing date*, Ms. McCord contacted the administrative law judge. Ms. McCord confirmed that she was aware of the time of the hearing and was aware that she would be called at the time the hearing at the number she provided.

Ms. McCord asserted that she had planned to use her mother's phone. Ms. McCord asserted that she was at her mother's home at the time of the hearing, but that she was caring for children inside her mother's house while her mother spoke to law enforcement outside the house. Ms. McCord asserted that her mother had noticed the incoming call, had noted that the call was from a restricted number, had assumed the call was from Ms. McCord's incarcerated sister, and had purposely ignored the call. When asked why Ms. McCord had not contacted the administrative law judge at the time of the hearing in response to instructions the Appeals Section staff would have given her and/or in response to the two messages administrative law judge left for her at the scheduled start of the hearing, Ms. McCord did not have a response other than to say that she has been busy. Ms. McCord had the same response when asked why she had waited three days after the hearing to make contact with the administrative law judge. The administrative law judge provided Ms. McCord with an opportunity to submit documentation to support her assertion that her mother had been speaking with law enforcement at the time the hearing, as well as her other assertions about why she was not available at the time the hearing. Despite being given two weeks in which to submit documentation, Ms. McCord has provided no such documentation.

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 representatives August 16, 2012, reference 02, decision is affirmed. The decision that disqualified the claimant from receiving benefits effective March 4, 2012 based on a conclusion that she was not partially unemployed from Cobia Community Services 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