

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLEY K PINEGAR
Claimant

APPEAL NO. 08A-UI-00584-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SOUTHEAST POLK COMMUNITY SCH DIST
Employer

**OC: 12/23/07 R: 02
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge
Section 17A.12-3 – Non-appearance of a Party
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

An appeal was filed from an unemployment insurance decision dated January 9, 2008, reference 01, that concluded the claimant was discharged for work-connected misconduct. A telephone hearing was scheduled for January 31, 2008. The claimant did not participate in the hearing because she was not available for the phone at the time of the hearing. Steve Oberto participated in the hearing on behalf of the employer and agreed that a decision could be made based on the information in the administrative file. Based on the claimant's failure to participate in the hearing, the administrative file, and the law, the following findings of fact, reasoning and conclusions of law, and decision are entered.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The claimant provided a telephone number where she could be reached for the hearing but did not answer the phone at the time of the hearing. She did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

After the hearing had concluded, the claimant called the Appeals Section at 11:48 a.m. She asserted that her phone was accidentally turned off and she did not realize it. The reason for the claimant's appeal was that she missed her fact-finding interview because her phone was shut off.

A careful review of the information in the administrative file has been conducted to determine whether the unemployment insurance decision should be affirmed.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedures Act Section 17A.12-3 provides in pertinent part:

If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and make a decision in the absence of the party. ... If a decision is rendered against a party who failed to appear for the hearing and the presiding officer is timely requested by that party to vacate the decision for good cause, the time for initiating a further

appeal is stayed pending a determination by the presiding officer to grant or deny the request. If adequate reasons are provided showing good cause for the party's failure to appear, the presiding officer shall vacate the decision and, after proper service of notice, conduct another evidentiary hearing. If adequate reasons are not provided showing good cause for the party's failure to appear, the presiding officer shall deny the motion to vacate.

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 claimant has not shown good cause to reopen the hearing. Since her appeal was based on her failure to participate in the fact-finding interview because of a problem with her phone, one would think that she would try to prevent phone problems from occurring by making sure her phone was on and calling in immediately when she had not received a phone call. The administrative law judge has carefully reviewed the information in the administrative file in the record and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed.

DECISION:

The unemployment insurance decision dated January 9, 2008, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw