

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DUSTIN THEISS

Claimant

APPEAL NO. 08A-UI-00589-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINNEBAGO INDUSTRIES

Employer

**OC: 07/01/07 R: 02
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct
871 IAC 26.14(7) – Late Call
Section 17A.12-3 – Non-Appearance of Party
871 IAC 25.8(5) – Decision on the Record

STATEMENT OF THE CASE:

An appeal was filed from an unemployment insurance decision dated January 7, 2008, reference 01, that concluded Dustin Theiss (claimant) was not eligible for unemployment insurance benefits after a separation from employment from Winnebago Industries (employer). Notices of hearing were sent to both parties' last-known addresses of record for a telephone hearing to be held at 1:00 p.m. on February 4, 2008. The appellant did not participate in the hearing. The administrative law judge considered the record closed at 1:10 p.m. At 1:14 p.m., the appellant called the Appeals Section and requested that the record be reopened. 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:

The issue is whether the unemployment insurance decision previously entered in this case should be affirmed?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The hearing notice advising the claimant of the date and time of the appeal hearing was mailed to the claimant's correct mailing address. The claimant's wife received the hearing notice and advised the claimant of it and told him to call the 800 telephone number. The claimant called the Appeals Section and provided his telephone number. He was advised that if he did not receive a call by 1:05 p.m., there was a problem and he needed to call back in. The claimant went to pick up his kids and was not available at the scheduled hearing time. He called the Appeals Section at 1:14 p.m. and requested the record be reopened because the Appeals Section employee did not specify that the hearing was scheduled at 1:00 p.m.

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:

The Iowa Administrative Procedures Act Chapter 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 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

At issue is a request to reopen the record made after the record was considered closed. The request to reopen the record is denied because the party making the request failed to participate by not being available at the telephone number provided. The Appeals Section sent the claimant a hearing notice at the correct mailing address; the notice properly advised him of the correct date and time of the appeal hearing. The claimant received notice of the hearing because he called in to provide his telephone number. He was advised if he did not receive a call by five after the scheduled start time for the hearing, he needed to call back in as it would indicate there is a problem. The claimant contends the Appeals Section employee did not tell him the hearing was scheduled for a specific time but the time was clearly stated on the notice of hearing, which he received. The Appeals Section cannot be held responsible for the claimant's failure to read the hearing notice and make himself available at the scheduled time.

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. 871 IAC 25.8(5).

DECISION:

The unemployment insurance decision dated January 7, 2008, reference 01, is affirmed. The decision disqualifying the claimant from receiving benefits remains in effect.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css