

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARIANA HERNANDEZ**

Claimant

**APPEAL NO: 12A-UI-09707-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FRANK FIROZ**

Employer

**OC: 06/10/12**

**Claimant: Respondent (1)**

Iowa Code § 96.6-2 - Timeliness of Protest  
871 IAC 26.14(7) - Late Call  
Iowa Code § 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 July 26, 2012, reference 01, that concluded Mariana Hernandez (claimant) was eligible for unemployment insurance benefits after a separation from employment from Frank Firoz (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 September 5, 2012. The appellant did not participate in the hearing. The administrative law judge considered the record closed at 1:10 p.m. At 2:46 p.m., the employer 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 having considered all of the evidence in the record, finds that: The employer received the hearing notice prior to the September 5, 2012 hearing and provided two contact numbers. The administrative law judge called the first number provided by the employer (712-444-4704) and the number was not a valid number. The person who answered the telephone said he used to work for the employer, but this was not the employer's number. The administrative law judge called the second number (239-494-0575) two separate times and left two messages. All phone calls were recorded.

The employer called the Appeals Section on September 5, 2012 at 2:46 p.m. and again at 3:21 p.m., but the administrative law judge was unavailable. The employer said he waited but

never received a call for the hearing. The administrative law judge called the employer at 3:59 p.m. on September 6, 2012 but could only leave a message. The employer called the Appeals Section on September 10, 2012 and the administrative law judge returned the call that day. The employer argued that he never received a call for the hearing and was advised the calls were recorded.

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 § 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 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). If the appellant does not present any evidence at the appeal hearing, the administrative law judge has no grounds in law or fact to reverse the initial decision.

**DECISION:**

The unemployment insurance decision dated July 26, 2012, reference 01, is affirmed. The decision holding the claimant qualified for benefits remains in effect.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw