

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

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13256 PFEIFF RD  
BURLINGTON IA 52601

PARISIAN VIRGINIA LLC  
C/O TALX – UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-08592-SWT  
OC: 07/17/05 R: 04  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

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 August 10, 2005, reference 01, that concluded the claimant's discharge was not for any current act of work-connected misconduct. A telephone hearing was scheduled for September 6, 2005. The claimant participated in the hearing and agreed that a decision could be made based on the information in the file. The employer did not participate in the hearing. Based on the employer's failure to participate in the hearing, the 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 hearing notice instructs the parties to immediately call in after receiving the hearing notice to provide the

names and telephone numbers of the participants for the hearing and states that the judge will not call unless this requirement is met. The employer failed to call in to provide a telephone number at which a representative 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. At approximately 8:51 a.m., after the hearing record had closed, Lisa Kupfer called in on behalf of the employer. She did not know whether TALX UC eXpress, the employer's unemployment insurance representative, had called in her number or not. Later, Bevin Peppard of TALX UC eXpress called in and admitted that no one had called in to provide the telephone number of the employer's participant for the hearing. She believed that the fax sent in on August 30, 2005, along with some additional documentation for the hearing that contained Lisa Kupfer's name and phone number, should have enough to satisfy the requirement of the hearing notice and the law.

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 26.14(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 hearing had concluded. The request to reopen the record is denied because the party making the request failed to participate by reading and following the instructions on the hearing notice.

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 that concluded the claimant was not discharged for a current act of misconduct is correct and should be affirmed.

**DECISION:**

The unemployment insurance decision dated August 10, 2005, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/kjw