

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL DURHAM**

Claimant

**LABOR READY MIDWEST INC**

Employer

**APPEAL NO: 13A-UI-09967-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/21/13**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct  
871 IAC 26.8(5) – Decision on the Record

**STATEMENT OF THE CASE:**

The employer/appellant filed a timely appeal from the August 21, 2013, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was scheduled by telephone conference call before Administrative Law Judge Julie Elder on September 30, 2013. The appellant provided a phone number prior to the hearing but the number was incorrect. The administrative law judge and the claimant waited 15 minutes for the employer to call in, 10 minutes longer than the five minutes from the start time of the hearing as the parties are instructed to call the Appeals Bureau, when originally calling to provide their numbers, if the administrative law judge has not called. The employer never called back to provide the correct number, and consequently did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Based on the appellant's failure to participate in the hearing, the available evidence in 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 representative's decision should be affirmed.

**FINDINGS OF FACT:**

Having considered all of the available evidence in the record, the administrative law judge finds: The parties were properly notified of the scheduled hearing on this appeal. The appellant was not available at the number provided and did not call the Appeals Bureau five minutes after the start time of the hearing, as instructed when originally calling in to provide their numbers, if they do not receive a call from the administrative law judge after that time. The claimant and the administrative law judge waited 15 minutes for the employer to call but it did not and the employer did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The administrative law judge has conducted a careful review of the available 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.

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 the 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 or the appellant files an appeal with the Employment Appeal Board within 15 days of the mailing date of the decision.

**DECISION:**

The unemployment insurance decision dated August 21, 2013, reference 02, is affirmed. The representative's decision allowing benefits to the claimant 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 or an appeal is filed with the Employment Appeal Board within 15 days of the date of this decision.

---

Julie Elder  
Administrative Law Judge

---

Decision Dated and Mailed

je/css