

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASHLEY MCNEELY
Claimant

APPEAL NO: 13A-UI-12240-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 04/07/13
Claimant: Appellant (1)

Iowa Code § 96.4-3 - Able and Available for Work
Iowa Code § 96.6-2 - Timeliness of Appeal
871 IAC 26.8(5) - Decision on the Record

STATEMENT OF THE CASE:

Ashley McNeely (claimant) appealed an unemployment insurance decision dated October 15, 2013, reference 04, which held that she was not eligible to receive benefits from September 15, 2013 through September 21, 2013 due to her failure to make a work search. A hearing was scheduled for November 20, 2013. The appellant did not participate in the hearing.

ISSUE:

The issue is whether the unemployment insurance decision should be affirmed.

FINDINGS OF FACT:

Having reviewed the administrative record, the administrative law judge finds: The party was properly notified of the scheduled hearing on this appeal. As shown on the Clear2There hearing control screen, there is no phone number listed for the appellant. This means she failed, prior to the hearing date and time, to provide a telephone number at which she could be reached for the hearing. The claimant did not participate or request a postponement of the hearing as required by the hearing notice instructions. There is no evidence the hearing notice was returned by the postal service as undeliverable for any reason.

The first issue to be determined if the hearing had been held was whether the claimant's appeal was timely.

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

The administrative law judge has carefully reviewed the record and concludes that the claimant must first establish she filed a timely appeal before the reasons for the underlying separation can be reviewed. The administrative law judge further concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed. 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.

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 this decision. The written request should be mailed to the administrative law judge at the address listed at the end 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. The appellant also has the option to appeal the decision directly to the Employment Appeal Board, whose address is listed at the beginning of the decision.

DECISION:

The unemployment insurance decision October 15, 2013, reference 04, is affirmed. The decision disqualifying the claimant from receiving benefits remains in effect. This decision will become final unless within 15 days a written request is made to the administrative law judge to reopen the record or an appeal is made to the Employment Appeal Board.

Susan D. Ackerman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-242-5144

Decision Dated and Mailed

sda/css