

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFREY NIELSEN
Claimant

APPEAL NO: 12A-UI-11471-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MICAH HOUSE CORP
Employer

OC: 09/02/12
Claimant: Appellant (1)

Iowa Code § 96.5-1 - Voluntary Quit
871 IAC 26.8(5) - Decision on the Record

STATEMENT OF THE CASE:

Jeffrey Nielsen (claimant) appealed an unemployment insurance decision dated September 21, 2012, reference 01, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Micah House Corporation (employer) without good cause attributable to the employer. A hearing was scheduled for October 18, 2012. The appellant did not participate in the hearing. 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 parties were properly notified of the scheduled hearing on this appeal. The appellant failed to provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. The hearing notice went out on September 27, 2012. The administrative law judge received email notification on October 1, 2012 that interrogatories had been sent out, but there was no notice as to which party sent the interrogatories. No contact was made by the claimant/appellant prior to the hearing.

At the scheduled start time of the hearing, the employer witness called in and the administrative law judge questioned the witness as to whether she sent out interrogatories. The witness indicated that she received them from Legal Aide and had spent ten hours answering these interrogatories. The administrative law judge then requested from the Appeals Staff a copy of the interrogatory request. Attorney Michael Tulis states in his second paragraph, "I will be representing Mr. Nielsen at the telephone appeal hearing. Please notify me of the time and date of the hearing when it is rescheduled." This was not considered a postponement request per se and was not treated as one. The claimant's attorney never followed up on this and never

contacted the Appeals Section to request a postponement and/or to inquire into the status of the hearing.

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.

In the case herein, it is questionable as to whether a postponement was actually requested. However, assuming it was, there was no basis or explanation as to why the postponement was being requested. Postponements may be granted due to an emergency or other good cause. There was not an emergency or any good cause provided for a postponement. Interrogatory requests sent by the parties do not become part of the administrative record unless a party offers them into evidence and they are admitted into evidence. The administrative law judge does not even see the interrogatories unless this is the case. Although the request may go through the Appeals Section, there is no automatic delay of a scheduled hearing because of this request. The letter sent out on October 2, 2012 regarding these interrogatories indicated they were due ten days after they were sent. This would have been sufficient time in which to review this information.

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. 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 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.

DECISION:

The unemployment insurance decision dated September 21, 2012, reference 01, is affirmed. The decision disqualifying the claimant from receiving benefits 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 within 15 days of the date of this decision.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw