

**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**

**FERNANDO RAMOS
5121 STANCLIFF ST
BAKERSFIELD CA 93307-6385**

**DES STAFFING SERVICES INC
#200
1300 CUMMINS RD
DES MOINES IA 50315**

**Appeal Number: 06A-UI-00601-HT
OC: 10/02/05 R: 01
Claimant: Appellant (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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

871 IAC 26.8(5) - Decision on the Record

STATEMENT OF THE CASE:

An appeal was filed from an unemployment insurance decision dated January 13, 2006, reference 05, that concluded the claimant was disqualified from receiving unemployment benefits. A telephone hearing was scheduled for February 2, 2006. 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.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The appellant provided a telephone number of (661) 834-0795. That number was dialed twice by the

conference operator and no one answered. By the time the record was closed at 8:13 a.m., the appellant had not contacted the Appeals Section and requested to participate.

The administrative law judge has conducted a careful review of the administrative file to determine whether the unemployment insurance decision should be affirmed.

The claimant called at 10:05 a.m. on February 2, 2006. He was not available to take a return call until February 3, 2006, and he was called 9:39 a.m. The claimant resides in California and did not take into account the time difference between Iowa and California and was not available at the time of the hearing.

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 evidence in the record and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed.

The next issue is whether the record should be reopened. The judge concludes it should not. Mr. Ramos received the notice of the hearing and did provide a telephone number where he could be contacted. However, he did not read the portion of the notice which states the hearing is at Iowa time. The claimant lives in California and did not take into consideration the time difference. The administrative law judge considers this is not good cause for reopening the record under the provisions of 871 IAC 26.14(7)c.

DECISION:

The unemployment insurance decision dated January 13, 2006, reference 05, is affirmed. The decision disqualifying the claimant from receiving benefits remains in effect.

bgh/kjw