

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WENCESLAO VAZQUEZ
Claimant

APPEAL NO. 09A-UI-00481-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ARR ROOFING OF IOWA LLC
BOONE BROTHERS ROOFING**
Employer

**OC: 11/20/08 R: 01
Claimant: Appellant (1)**

Section 96.4(3) – Able and Available
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

An appeal was filed from an unemployment insurance decision dated January 9, 2009, reference 02, that concluded the claimant was not able and available for work. A telephone hearing was scheduled for January 28, 2009, but the claimant called on January 20, 2009, to notify the Appeals Section he needed an interpreter.

An interpreter was appointed and a notice was mailed on January 21, 2009, for a hearing on February 4, 2009. The claimant provided a telephone number where he could be contacted for the hearing and that number was dialed twice, once at 10:59 a.m. and at 11:01 a.m. on the hearing date. The only response was a message indicating the “Long Lines Wireless customer” was not answering.

When the employer was contacted for the hearing Office Manager Gina Mycka stated the appellant was in Mexico and was not expected back until February 7, 2009.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The appellant failed to make himself available at the phone number he had provided for the hearing.

The administrative law judge has conducted a careful review of 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 evidence in the record and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed.

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 January 9, 2009, reference 02, is affirmed. The decision finding the claimant is not able and available for work 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.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs