

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BLAKE S BRAAFHART
Claimant

APPEAL NO. 13A-UI-12308-HT

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 08/04/13
Claimant: Appellant (1)

871 IAC 24.2(1)g – Retroactive Benefits
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

An appeal was filed from an unemployment insurance decision dated October 3, 2013, reference 07, which denied the claimant's request for retroactive unemployment benefits. A telephone hearing was scheduled for November 27, 2013. The appellant did not participate in the hearing. Based on the appellant's failure to participate in the hearing, the available 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 claimant is eligible for retroactive benefits.

FINDINGS OF FACT:

Having reviewed all of the available evidence in the administrative record, the administrative law judge finds: The appellant provided a telephone number to the Appeals Section. That number was dialed at 8:01 a.m. and the only response was a voice mail. A message was left indicating the hearing would proceed without the appellant's participation unless he contacted the Appeals Section prior to the close of the record. By the time the record was closed at 8:17 a.m. the appellant had not responded to the message and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The parties were properly notified of the scheduled hearing on this appeal. There is no evidence the hearing notice was returned by the postal service as undeliverable for any reason.

The record was closed at 8:17 a.m. At 12:54 p.m. the appellant called and requested to participate. The appellant received the hearing notice prior to the November 27, 2013 hearing. The instructions inform the parties that if the party does not contact the Appeals Section and provide the phone number at which the party can be contacted for the hearing, the party will not be called for the hearing.

The appellant had a fact-finding interview for another issue with a former employer on November 26, 2013. For reasons which are not clear the appellant thought that interview had taken the place of the appeal hearing on November 27, 2013. He did not make himself available when the judge called at 8:01 a.m. and did not check his voice mail message until nearly five hours later.

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 the available administrative file and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed.

871 IAC 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be

issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

The appellant did not make himself available for the hearing at 8:00 a.m. on November 27, 2013. His reason was that he thought the fact-finding interview the day before took care of the matter. But this appeal was for another matter which did not include an employer. The appellant did not establish good cause to reopen the hearing. Therefore, the appellant's request to reopen the hearing is denied.

DECISION:

The unemployment insurance decision dated October 3, 2013, reference 07, is affirmed. The decision denying the claimant's request for retroactive benefits remains in effect.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs