

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREW T WOOD
Claimant

APPEAL NO: 09A-UI-06391-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACME ELECTRIC MOTOR INC
Employer

OC: 01/18/09
Claimant: Appellant (1)

Section 96.5-5 – Severance Pay
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

Andrew T. Wood (claimant) appealed a representative's April 21, 2009 decision (reference 01) that concluded he was not eligible to receive benefits for the weeks ending January 24 through February 14, 2009, because he received or was entitled to receive four weeks of severance pay from Acme Electric Motor, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 21, 2009. The claimant did not participate in the hearing. Gretchen Ramsey and Jim Johnson appeared on the employer's behalf.

After the hearing had been closed and the employer had been excused, the claimant contacted the Appeals Section to participate in the hearing. The claimant made a request to reopen the hearing. Based on the claimant's request to reopen the hearing, the administrative record 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 Appeals Section has no record of the claimant providing a telephone number at which he could be reached for the hearing after he received the hearing notice. The claimant did not participate in the 9:00 a.m. hearing or request a postponement of the hearing as required by the hearing notice.

After the hearing had been closed and the employer had been excused, the claimant contacted the Appeals Section at 9:43 a.m. The claimant made a request to reopen the hearing. The claimant did not have a control number.

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:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c). Since the claimant did not have a control number and there is no record that he contacted the Appeals Section after he received the hearing notice to provide the phone number at which he could be contacted, the record indicates the claimant did not follow the instructions on the hearing notice. Therefore, the claimant's request to reopen the hearing is denied.

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 and Iowa Code section 17A.12-3, the claimant 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 claimant from participating in the hearing at its scheduled time.

DECISION:

The claimant's request to reopen the hearing is denied. The representative's April 21, 2009 decision (reference 01) is affirmed. The decision holding the claimant ineligible to receive benefits until the week of February 15, 2009, because he received four weeks of severance pay is affirmed. 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.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs