

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BARB L SUDEN**  
Claimant

**APPEAL NO. 07A-UI-01213-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IBP FOODS INC**  
Employer

**OC: 12/17/06 R: 01  
Claimant: Respondent (1)**

871 IAC 26.8(5) - Decision on the Record

**STATEMENT OF THE CASE:**

IBP Foods appealed from an unemployment insurance decision dated January 22, 2007, reference 02, that allowed benefits. A telephone hearing was scheduled for February 19, 2007. The employer/appellant provided a telephone number for the hearing, but was not available at that number at the scheduled time of the hearing. Claimant Barb Suden was available for the hearing. Based on the employer/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:**

Decision on the record.

**FINDINGS OF FACT:**

The parties were properly notified of the scheduled hearing on this appeal. The appellant, IBP Foods, responded to the hearing notice instructions and provided a telephone number at which a representative could be reached for the hearing: Hal Edrington at 712-329-4370. However, at the scheduled time of the hearing, the employer representative was not available at the telephone number the employer had provided. At the time of the hearing, the administrative law judge called the number the employer had provided for the hearing and spoke with Human Resources Clerk Sue Duval. Ms. Duval indicated that Mr. Edrington was out of the office. The administrative law judge inquired whether someone else could handle the hearing or whether Ms. Duval had other means to contact Mr. Edrington. Ms. Duval offered to contact Mr. Edrington at his home phone. The administrative law judge waited until 14 minutes after the scheduled start of the hearing to recontact the employer. At that time, Ms. Duval indicated that she had been unsuccessful in her attempt to reach Mr. Edrington. Ms. Duval indicated a desire to contact Mr. Edrington's supervisor to inquire whether Ms. Duval was authorized to represent the employer in the hearing. Mr. Duval was unsuccessful in her attempt to reach Mr. Edrington's supervisor. Ms. Duval indicated that she did not wish to represent the employer at the hearing without authorization to do so. The administrative law judge inquired why Mr. Edrington was not available. Ms. Duval indicated that Mr. Edrington had taken a vacation

day and may have forgotten about the hearing. The appellant did not request a postponement of the hearing as required by the hearing notice.

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 Agency representative's January 22, 2007, reference 02, decision is affirmed. The decision allowing 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs