

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA SCHAEVE
Claimant

APPEAL NO. 13A-UI-10466-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PSALM 51-7 ENTERPRISES INC
MOLLY MAID – CEDAR RAPIDS/IOWA CITY
Employer

OC: 07/22/12
Claimant: Appellant (1)

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.5-2-a - Discharge for Misconduct
Iowa Code § 96.6-2 - Timeliness of Appeal
871 IAC 26.8(5) - Decision on the Record

STATEMENT OF THE CASE:

Jessica Schaeve (claimant) appealed an unemployment insurance decision dated August 1, 2013, reference 07, which held that she was ineligible for unemployment insurance benefits from the date of her termination to the effective date of her resignation with Molly Maid – Cedar Rapids/Iowa City (employer) but denied benefits thereafter. A hearing was scheduled for October 8, 2013 at 10:00 a.m. The employer was available to participate but the claimant was not available at the number she provided for the hearing. In fact, the number was not a working number but it was the same number listed on her hearing notice.

The claimant called the Appeals Bureau at 10:26 a.m. and reported she had called in to change her number. There was no record of any call but the administrative law judge began the hearing after first completing a hearing with the claimant on Appeal Number 13A-UI-10465-BT, which had been scheduled for 9:30 a.m. Opening statements were provided but the claimant's pre-paid cell phone stopped working at some point during opening statements and she was no longer on the line. The record was closed at 10:56 a.m. and the administrative law judge waited until 3:56 p.m. before issuing the decision in this case.

ISSUE:

The issue is whether the unemployment insurance decision should be affirmed.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The appellant provided a phone number that did not work. She called in late reporting she had updated her telephone number so the administrative law judge proceeded with the hearing. The claimant's cell phone stopped working before the hearing could be completed. She did not call the Appeals Bureau within the subsequent five hours after the record closed.

The first issue to be determined if the hearing had been held was whether the claimant's appeal was timely. The decision was issued on August 1, 2013 and became final on August 11, 2013 unless an appeal was filed by that date. The claimant's appeal was dated September 3, 2013 but mailed and effectively filed on September 11, 2013.

The administrative law judge has conducted a careful review of the available documents in 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 the record and concludes that the claimant must first establish a timely appeal was filed before the reasons for the underlying separation can be reviewed. The administrative law judge further concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed. If the appellant does not present any evidence at the appeal hearing, the administrative law judge has no grounds in law or fact to reverse the initial decision.

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 end 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. The appellant also has the option to appeal the decision directly to the Employment Appeal Board, whose address is listed at the beginning of the decision.

DECISION:

The unemployment insurance decision dated August 1, 2013, reference 07, is affirmed. The disqualification decision 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.

Susan D. Ackerman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-242-5144

Decision Dated and Mailed

sda/pjs