

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARVIN D COTHER
Claimant

APPEAL NO. 13A-UI-12876-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROSENBOOM MACHINE & TOOL INC
Employer

OC: 10/20/13
Claimant: Appellant (1)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

Marvin Cother appealed from an unemployment insurance decision dated November 13, 2013, reference 01, that denied benefits. A telephone hearing was scheduled for December 10, 2013. Mr. Cother did not respond to the hearing notice instructions and did not participate in the hearing. The employer was available for the hearing through Melissa Milbrath, Human Resources. Based on the 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. The administrative law judge hereby takes official notice of the agency's administrative record (APLT and Clear2There Hearing Control screen) documenting Mr. Cother's failure to provide a telephone number for the hearing.

ISSUE:

Whether Mr. Cother was discharged for misconduct in connection with the employment based on an excessive unexcused tardiness.

FINDINGS OF FACT:

The parties were properly notified of the December 10, 2013 appeal hearing by notice mailed to their last-known address of record on November 25, 2013. The appellant, Marvin Cother, failed to provide a telephone number at which he could be reached for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. The address to which Mr. Cother's hearing notice was mailed is the same address that Mr. Cother provided in his appeal letter. There is no evidence the hearing notice was returned by the postal service as undeliverable for any reason.

On December 6, 2013, the Appeals Section mailed to Mr. Cother a copy of the employer's proposed exhibits. That packet also contained a copy of the hearing notice that set forth the requirement to call in a telephone number 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 Agency representative's November 13, 2013, reference 01, decision is affirmed. The decision that disqualified the claimant for benefits based on an agency conclusion that he was discharged for excessive unexcused tardiness 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css