

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STACEY SEDGWICK
Claimant

APPEAL NO: 12A-UI-02881-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

BICKFORD SENIOR LIVING GROUP LLC
Employer

OC: 01-15-12
Claimant: Appellant (1)

Section 96.4-3 – Able and Available for Work
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

The claimant/appellant filed a timely appeal from the March 15, 2012, reference 04, decision that denied benefits, finding the claimant was not able and available for work effective February 19, 2012. After due notice was issued, a hearing was scheduled by telephone conference call before Administrative Law Judge Julie Elder on May 8, 2012. The appellant provided a phone number prior to the hearing but was not available at that number at the time of the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Based on the appellant's failure to participate in the hearing, the available evidence in the administrative file and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

The claimant called at 2:47 p.m. for the 2:00 p.m. hearing and stated to the Appeals Section staff she missed the hearing because she had a doctor's appointment. The administrative law judge called her back but did not get an answer. She left a message for the claimant asking that she provide a doctor's excuse for her appointment by noon on May 11, 2012, in which case she would consider reopening the record. The claimant's health care provider faxed a note May 9, 2012, stating the claimant had an appointment with her from 11:00 a.m. to 12:00 p.m. (Department's Exhibit D-1 was admitted into evidence). The administrative law judge called the claimant May 9, 2012, to inquire further into the situation. The claimant stated she had other appointments and interviews but could not be specific about those obligations and stated she could possibly provide notes for some but not others. When asked why she did not simply call the administrative law judge and request a postponement of the hearing, the claimant could not provide a clear answer beyond being too busy. Under these circumstances, the administrative law judge must conclude the claimant was not available for the hearing at the time of the hearing and has not provided a good cause reason for failing to participate in the hearing or call and request a postponement of the hearing as required by the hearing notice.

ISSUE:

The issue is whether the representative's decision should be affirmed.

FINDINGS OF FACT:

Having considered all of the available evidence in the record, the administrative law judge finds: The parties were properly notified of the scheduled hearing on this appeal. The appellant provided a phone number prior to the hearing but was not available at that number at the time of the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The administrative law judge has conducted a careful review of the available 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.

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 the 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 unemployment insurance decision dated March 15, 2012, reference 04, is affirmed. The representative's decision denying benefits to the claimant effective February 19, 2012, because she was not able and available for work, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw