

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 04A-UI-08786-CT
OC: 07/18/04 R: 02
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party request the Appeals Section to reopen the record at the address listed at the top of this decision or appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 871 IAC 26.8(5) - Decision on the Record

STATEMENT OF THE CASE:

An appeal was filed from an unemployment insurance decision dated August 6, 2004, reference 01, that concluded Pamela Bullington had been discharged but misconduct had not been established. A telephone hearing was scheduled for September 7, 2004. The employer, the appellant herein, responded to the notice of hearing but the designated witness was not available at the number provided at the scheduled time of the hearing. The employer's representative opted to stand on the record. On September 9, 2004, the administrative law judge received a "Request to Re-Open" from the employer's representative. The request is denied for the reasons stated herein.

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.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The appellant failed to provide a telephone number at which its witness 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 "Request to Re-Open" cites the fact that the employer's designated witness was involved in assuring completion of a major contract that was to be completed by September 7, 2004, the date of the hearing. The request cited the fact that the witness has just worked a 24-hour shift the day preceding the hearing and the entirety of the prior weekend of September 4 and 5. The request further cited the fact that the witness was unable to make time for the hearing because of the contract deadline.

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. The employer had the burden of proving disqualifying misconduct. The employer did

not avail itself of the opportunity to offer evidence as to why the prior decision should be reversed.

The employer's request to reopen the record is denied as it failed to establish good cause to do so. It was the witness' responsibility to be aware of his scheduled obligations, including the unemployment hearing scheduled for September 7, 2004. Given the amount of time he had been spending on the project and given that the contract deadline fell on the same day as the hearing, the witness could have anticipated that there might be a problem participating in the hearing. Given these factors, the administrative law judge concludes that there was no emergency which prevented the witness from participating. The employer's representative was not aware at the time of the hearing that there were any problems preventing the witness from participating. The witness could have found the necessary few minutes it would have taken to at least alert the representative as to a potential problem. Recognizing that he would be unable to participate, the witness could have requested a last-minute postponement of the hearing. He could also have designated another individual to give testimony on the employer's behalf. The fact that the witness was busy did not provide good cause for not making alternative arrangements prior to the hearing.

DECISION:

The unemployment insurance decision dated August 6, 2004, reference 01, is affirmed. The decision holding the claimant qualified for benefits remains in effect. This decision will become final unless a written appeal is filed with the Employment Appeal Board within 15 days of the date of this decision.

cfc/pjs