

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CYNTHIA A MCLAUGHLIN
Claimant

APPEAL NO. 13A-UI-03378-M

**ADMINISTRATIVE LAW JUDGE
DECISION ON REQUEST FOR REHEARING**

ACCESSIBLE MEDICAL STAFFING
Employer

**OC: 02/10/13
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

An appeal was filed from an unemployment insurance decision dated March 11, 2013, reference 01, that concluded claimant was eligible. A hearing was scheduled for April 29, 2013. The appellant did not participate in the hearing. Based on appellant's failure to participate in the hearing, the administrative file, and the law, the administrative law judge entered a decision. The administrative file is admitted as Exhibit One.

This matter had been postponed prior to the hearing date. No hearing should have been held on April 29, 2013. This matter must be rescheduled for an in-person hearing in Des Moines Iowa. The decision entered by the administrative law judge is held moot.

ISSUE:

The issue in this matter is whether good cause exists to reopen the record.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal.

The administrative law judge has conducted a careful review of the administrative file that this matter had been postponed and no hearing should have been held on April 29.

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 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.

The administrative law judge has carefully reviewed evidence in the record and concludes that the record should be reopened because the case had previously been postponed.

DECISION:

The unemployment insurance decision dated March 11, 2013, reference 01, is rescheduled for a new hearing. A new hearing shall be scheduled at Des Moines Iowa. The decision issued by the administrative law judge is moot as the case should have been rescheduled. The request to reopen the record is granted.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs