

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VAHIDIN SPAHIC
Claimant

APPEAL NO. 07A-UI-01801-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES IND COMMUNITY SCH DIST
Employer

OC: 01/21/07 R: 02
Claimant: Respondent (1)

871 IAC 26.8(5) - Decision on the Record

STATEMENT OF THE CASE:

The Des Moines Independent Community School District appealed from an unemployment insurance decision dated February 13, 2007, reference 01, that allowed benefits. An in-person hearing was scheduled for April 2, 2007. The employer/appellant did not appear for the hearing or otherwise respond to the notice of the hearing. Claimant Vahidin Spahic appeared. Bosnian-English interpreter Zijo Sucasca also appeared. Based on the employer/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.

ISSUE:

Decision on the record.

FINDINGS OF FACT:

The employer is the appellant in this matter. This matter was initially scheduled for a telephone hearing on March 7, 2007 and the parties were properly notified of that hearing. The employer responded to that hearing notice and provided the name of a representative and a telephone number at which the representative could be reached for the March 7 telephone hearing: Kathy McKay at 515-242-8131. Upon receiving the notice for the telephone hearing, claimant Vahidin Spahic requested an in-person hearing. Both parties are located in Des Moines.

On March 21, 2007, the Appeals Section mailed notice of an in-person hearing to both parties at their addresses of record. The notice set forth the time and location of the in-person hearing: Monday, April 2, 2007, 8:30 a.m. at 150 Des Moines Ave, Room 103, Des Moines, Iowa. There is no evidence the hearing notice was returned by the postal service as undeliverable for any reason.

Mr. Spahic has limited English skills. Accordingly, the Agency made arrangements for a Bosnian-English interpreter to assist with the hearing. On March 20, 2007, the administrative law judge made a recorded telephone call to employer representative Kathy McKay, Risk Manager, at the telephone number Ms. McKay had provided for the March 7 hearing. That number was the same number provided in the employer's appeal letter. The sole purpose of

the call was to inquire about the number of witnesses the employer intended to call for the hearing so that the Agency could retain the interpreter for the appropriate length of time. The administrative law judge was not able to speak directly with Ms. McKay, but left an appropriate message in her voice mailbox. The administrative law judge stated the purpose of the call. The administrative law judge advised Ms. McKay that a hearing would be scheduled for April 2, 2007. The administrative law judge requested a return phone call. The employer did not respond to the administrative law judge's March 20 phone call and did not appear for the hearing. The employer did not request a postponement of the hearing. The claimant and the interpreter both appeared for the hearing and the administrative law judge made an appropriate record.

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 claims representative's February 13, 2007, reference 01, decision is affirmed. The decision allowing benefits 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/pjs