

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KATHY CARNES**  
Claimant

**APPEAL NO. 12A-UI-13059-JTT**

**ORDER**

**TARGET**  
Employer

**OC: 05/06/12**  
**Claimant: Respondent**

871 IAC 26.13 – Subpoenas  
871 IAC 26.9(8) – Sanctions

This matter was set for a new appeal hearing on January 9, 2013 at 2:00 p.m. The claimant, Kathy Carnes, was earlier denied an opportunity to participate in a December 3, 2012 appeal hearing due to an Appeals Section representative's failure to properly document the telephone number she had provided for that hearing.

The employer, Target, asserts in its appeal letter that Ms. Carnes voluntarily quit by being absent three days without contacting the employer.

On January 3, 2013, Ms. Carnes, filed a timely request for a subpoena to compel the employer to provide her with the last names of two Target employees so that she could present their testimony as her side of the case. Ms. Carnes asserts in her subpoena request that she telephoned the Target store one or more of the days the employer says she was a no-call/no-show and that she spoke to a guest services representative, Shirley, and a lead cashier, Dave. The employer had previously refused in writing to provide the requested information in response to Ms. Carnes' direct request.

On Friday, January 4, 2013, the undersigned administrative law judge approved Ms. Carnes' subpoena request pursuant to Iowa Administrative Code rule 871 IAC 26.13. On Monday, January 7, 2013, the subpoena clerk faxed a subpoena to Abigail Price, Executive Team Leader of Human Resources, at the Altoona Target. The subpoena commanded the employer to immediately provide the following to Ms. Carnes and to the Appeals Section:

The full names of the Claimant's prospective witnesses referred to in her requests to you. Also provide addresses where the prospective witnesses can receive a subpoena as well as a telephone number where the prospective witnesses may be reached for the hearing set for 1/9/13 at 2:00 PM.

The subpoena warned the employer that, "Failure to provide the requested information as directed will subject you to penalties provided by law."

On January 8, 2013, the employer added Dave Betcher to the list of people who would be participating in the appeal hearing from the number the employer had provided for the hearing.

At the time set for the January 9, 2013 appeal hearing, the administrative law judge inquired into whether and to what extent the employer had complied with the subpoena. Ms. Price acknowledged timely receipt of the subpoena on January 7, 2013. Ms. Price represented that Mr. Betcher was the only Dave on staff and the person to whom Ms. Carnes must have been referring. Ms. Price identified Shirley as Shirley Armstrong, the store operator. The employer had not added Shirley for the hearing. Ms. Price advised that the employer refuses to comply with the subpoena insofar as it calls for contact information for Ms. Armstrong or for her participation in the appeal hearing. The employer cites a policy of not having Team Members, i.e. non-supervisory staff, participate in unemployment insurance appeal hearings.

On January 9, 2013, the administrative law judge advised the employer that the employer's compliance with the subpoena was not discretionary, that the hearing would be postponed to provide the employer with time to comply with the subpoena by Friday, January 11, 2013, and that a hearing regarding sanctions for noncompliance with the subpoena would be scheduled. The administrative law judge advised the employer that the contemplated sanction for non-compliance with the subpoena was exclusion of the employer from the appeal hearing or dismissal of the appeal.

Ms. Price agreed to accept service of a subpoena compelling Mr. Betcher to appear for the rescheduled appeal hearing.

**IT IS HEREBY ORDERED THAT** the employer shall provide an address where Shirley Armstrong can receive a subpoena for the appeal hearing as well as a telephone number where Ms. Armstrong may be reached at the time of the appeal hearing. The employer shall provide this information in writing and shall do so no later than 4:30 p.m. on Friday, January 11, 2013. The written response may be faxed to the Appeals Section at 515-242-5144. The employer shall in all manner cooperate with securing Ms. Armstrong and Mr. Betcher for the rescheduled hearing.

**On Tuesday, January 15, 2013 at 8:00 a.m., the parties shall appear** by telephone for a hearing to determine whether sanctions should be imposed for the employer's non-compliance with the subpoena and this order. The administrative law judge will contact the parties at the numbers they previously provided unless the parties provide the Appeals Section with a different contact number prior to sanctions hearing. The contemplated sanction for non-compliance with the subpoena is exclusion of the employer from the unemployment insurance hearing and/or dismissal of the employer's appeal.

**A copy of this order shall be faxed to Target, c/o Abigail Price, at 515-412-3065.**

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James E. Timberland  
Administrative Law Judge

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Order Dated and Mailed

jet/css