

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREW BELL
Claimant

APPEAL NO: 12A-UI-00066-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ENDORFS CREATIVE COUNTERTOPS INC
Employer

**OC: 10-02-11
Claimant: Appellant (1)**

Section 96.4-3 – Able and Available for Work
Section 96.6-2 – Timeliness of Appeal
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the November 30, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was scheduled by telephone conference call before Administrative Law Judge Julie Elder on February 1, 2012. The appellant provided a phone number for the Davenport Workforce Development office where he could be reached to participate in the hearing. The administrative law judge called the number provided and was directed by a voice response system to a different number. She called that number and was placed on hold by a voice response system and hung up after 15 minutes. The administrative law judge called the Appeals Section to see if it had a different number for the Davenport office and after she called the number given she was placed in a voice mail response system again. At 2:19 p.m. the Appeals Section was contacted by a representative of the Davenport Workforce Development office and given a number to dial directly. The administrative law judge was notified of the new number at 2:22 p.m. and called that number at 2:23 p.m. at which time she was told the claimant left the building sometime during the four minutes it took for the Davenport representative to contact the Appeals Section and the administrative law judge to get the number and directly dial it. The administrative law judge told the Davenport Workforce office representative to call her if the claimant returned by 3:00 p.m. but he did not do so and the record was closed at 3:00 p.m. 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.

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 did not immediately notify the Davenport Workforce Development representative he was expecting

a call for an appeal hearing. He then chose to leave the building after he informed a representative he was waiting for a call for a hearing, which was before the administrative law judge was given the new number. The administrative law judge tried to call the claimant at the number he originally provided for the Davenport Workforce office and left the record open for one hour in case the claimant came back but he failed to do so. He 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 November 30, 2011, reference 01, is affirmed. The representative's decision denying benefits to the claimant 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/pjs