

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CRUZ NEYRA, MARIO, A**  
Claimant

**APPEAL NO. 13A-UI-11984-N**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 08/25/13**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

An appeal was filed from an unemployment insurance decision dated October 14, 2013, reference 04, that denied benefits finding that the claimant was not able to perform work as of August 25, 2013 due to surgery and continues to be not able to perform work but only provides proof of his ability to work. At the claimant's request, an in-person hearing was scheduled in Council Bluffs, Iowa for December 5, 2013. The claimant did not participate in the hearing or request a postponement. Based upon the appellant's failure to participate in the hearing and review of the administrative file, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

At issue in this matter is whether the decision previously entered should be affirmed.

**FINDINGS OF FACT:**

The parties were properly notified of the scheduled hearing on this appeal. The appellant failed to appear at the in-person hearing that was scheduled and did not request a postponement of the hearing as required by the hearing notice.

The administrative law judge has conducted a careful review of the administrative file to determine whether the unemployment insurance decision previously entered should be affirmed. In a telephone interview with an interviewer on October 10, 2013, at which time the claimant stated that "I cannot work at this time...I went to the disability office."

**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 the evidence in the record and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed. The claimant by his own statement indicates that he is unable to work and has attempted to claim disability.

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 unemployment insurance decision dated October 14, 2013, reference 04, is affirmed. The representative's decision remains in effect. Benefits are denied as of August 25, 2013 until the claimant provides proof that he is able to work.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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