

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SENNIE M KERBY**  
Claimant

**APPEAL NO. 10A-UI-14163-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GIT-N-GO CONVENIENCE STORES INC**  
Employer

**OC: 08/22/10  
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 October 6, 2010, reference 01, which held that misconduct had not been established in connection with Sennie Kerby's separation from Git-N-Go Convenience Stores, Inc. A telephone hearing was scheduled for 9:00 a.m. on November 30, 2010. The employer, the appellant herein, responded to the notice of hearing but the designated witness was not available at the scheduled time of the hearing. Based on the 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:**

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 be available at the telephone number provided for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The initial attempt to contact the employer was at 9:01 a.m. The number was answered by a machine and a message was left for the designated witness. A second attempt was made at 9:06 a.m. but neither the witness nor anyone else was available to participate on behalf of the employer. The witness contacted the Appeals Section at 9:14 a.m. She had been at another store and lost track of time. The hearing record was not reopened.

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 the evidence in the record and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed. The employer did not avail itself of the opportunity to provide evidence as to why the prior decision should be reversed. The employer failed to establish good cause for not participating at the scheduled time. It is the responsibility of the parties to be aware of the time of the hearing and to be available at the scheduled time.

**DECISION:**

The unemployment insurance decision dated October 6, 2010, reference 01, is affirmed. The decision holding the claimant qualified for benefits remains in effect. This decision will become final unless a written appeal is filed with the Employment Appeal Board within 15 days of the date of this decision.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs