

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KARI L TOBIN
Claimant

APPEAL NO. 07A-UI-00846-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OPERATION NEW VIEW
Employer

**OC: 07/16/06 R: 04
Claimant: Appellant (1)**

Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The claimant, Kari Tobin, filed an appeal from a decision dated January 25, 2007, reference 01. The decision found her overpaid \$50.00 in unemployment benefits. After due notice was issued, a hearing was scheduled to held by telephone conference call on February 8, 2007. The claimant provided a telephone number of (563)495-5106. That number was dialed at 9:02 a.m. and the only response was a voicemail. A message was left indicating the hearing would proceed without the claimant's participation unless she contacted the Appeals Section at the toll-free number prior to the close of the record. By the time the record was closed at 9:17 a.m. the claimant had not responded to the message and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. The employer, Operation New View, did not provide a telephone number where a representative could be contacted and did not participate.

ISSUE:

The issue is whether the claimant is overpaid in unemployment benefits.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The appellant failed to participate in the hearing. The administrative law judge has conducted a careful review of the administrative file to determine whether the unemployment insurance decision should be affirmed.

The record was closed at 9:17 a.m. At 9:23 a.m. the claimant called and requested to participate. She had intended to use a cell phone, which she had in her pocket, and it was out of the service area at the time the call was placed.

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.

The next issue is whether the record should be reopened. The judge concludes it should not.

Ref 94 (delete last two sentences)

The notice of the hearing specifically recommends against the use of cell phones. In spite of this recommendation the claimant chose to use a cell phone which was out of its service area at the time the judge placed the call. Failure to have reliable phone service, when advised not to use a cell phone, does not constitute good cause to reopen the record and the claimant's request is denied.

DECISION:

The representative's decision of January 25, 2007, reference 01, is affirmed. Kari Tobin is overpaid in unemployment benefits in the amount of \$50.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css