

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

WILLIAM L WATSON
218 CONGER ST
WATERLOO IA 50703

HARDEES FOOD SYSTEMS INC
c/o FRICK UC EXPRESS
ST LOUIS MO 63166

Appeal Number: 05A-UI-08050-JTT
OC: 07/03/05 R: 03
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party request the Appeals Section to reopen the record at the address listed at the top of this decision or appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

871 IAC 26.8(5) - Decision on the Record

STATEMENT OF THE CASE:

Hardee's appealed from an unemployment insurance decision dated July 26, 2005, reference 01, that allowed benefits. A telephone hearing was scheduled for September 1, 2005. Hardee's responded to the hearing notice instructions by providing a telephone number at which a representative could be reached for the hearing. However, at the time of the hearing, the employer representative was not available at the number provided for the hearing. The claimant also was not available at the number provided for the hearing. Based on the appellant's (employer'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.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The hearing had previously been scheduled for August 22, 2005. Both parties had responded to the hearing notice instructions by providing a number at which they could be reached at the time of the August 22 hearing. On August 22, Mr. Watson provided telephone number 319-287-5395. On August 17, the employer provided telephone number 319-236-2595 and designated Cindy Waddell as the employer's representative for the hearing. On August 22, the claimant was available by telephone at the scheduled time of the hearing. Ms. Waddell was not available for the hearing. The administrative law judge was able to make contact with Hardee's Assistant Manager Tina Chudarry, who indicated that her manager, Cindy Waddell, was out sick and had made no other arrangements for the hearing. At the employer's request, the administrative law judge agreed to reschedule the hearing to a later date. Notices were mailed to the parties on August 23, 2005, advising of the hearing on September 1, 2005. At the time of the rescheduled hearing, the administrative law judge was unable to reach Mr. Watson, but did leave a voice mail message.

At the time of the rescheduled hearing, the administrative law judge made two attempts to contact the employer representative at the designated number. On both attempts, the administrative law judge allowed the telephone to ring at least ten times. The appellant (employer) did not answer the telephone on either occasion. The appellant (employer) did not participate or request a postponement of the hearing as required by the hearing notice. There is no evidence the employer's hearing notice was returned by the postal service as undeliverable for any reason.

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 evidence in the record and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed.

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 July 26, 2005, reference 01, is affirmed. The decision allowing benefits 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.

jt/kjw