

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LARRY G HOLMES**

Claimant

**APPEAL NO. 09A-UI-18741-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PINNACLE HEALTH FACILITIES XVII LP**

Employer

**OC: 11/08/09**

**Claimant: Appellant (1)**

Iowa Code Section 96.5 (1) - Voluntary Quit  
871 IAC 26.8(5) - Decision on the Record

**STATEMENT OF THE CASE:**

Larry Holmes appealed from an unemployment insurance decision dated December 11, 2009, reference 03, that denied benefits based on an Agency conclusion that Mr. Holmes had voluntarily quit without good cause attributable to the employer. A telephone hearing was scheduled for January 27, 2010. Mr. Holmes did not respond to the hearing notice instructions and did not participate in the hearing. The employer was available for the hearing through Jeannette Cunningham, Certified Dietary Manager. 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:**

Decision on the record.

**FINDINGS OF FACT:**

The parties were properly notified of the scheduled hearing on this appeal. The appellant, Larry Holmes, failed to provide a telephone number at which he could be reached for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

Notice of the January 27, 2010 hearing was originally mailed to the parties on December 18, 2009. The Appeals Section directed Mr. Holmes' notice to his last-known address of record: 6701 SW 9th St., Des Moines, IA 50315-6166. On December 24, 2009, the Postal Service returned the notice to the Appeals Section with notation that Mr. Holmes was no longer at the address and that there was no forwarding address. The administrative law judge reviewed Mr. Holmes' December 11, 2009 appeal letter and noted that Mr. Holmes had provided a different address on that appeal letter: 1310 – 6th Ave., Des Moines, IA 50314. On January 12, 2010, the Appeals Section sent a new hearing notice to Mr. Holmes at the address had provided on his appeal form. There is no evidence the second 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 Agency representative's December 11, 2009, reference 03, decision is affirmed. The decision disqualifying the claimant from receiving 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.

A copy of this decision will be mailed to both addresses for the claimant referenced above.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs