

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY J GOESER
Claimant

APPEAL NO. 12A-UI-13656-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 10/14/12
Claimant: Appellant (1-R)

Iowa Code Section 96.4(3) – Able & Available
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

Timothy Goeser appealed from an unemployment insurance decision dated November 5, 2012, reference 01, that denied benefits effective October 14, 2012, based on an agency conclusion that he was not able to perform work due to illness. A telephone hearing was scheduled for December 13, 2012. Mr. Goeser was not available for the hearing and did not participate in the hearing. The employer was available for the hearing through Alice Rose Thatch of Corporate Cost Control and Adam Krepela, Cory Clark, and Amy Mickey of Hy-Vee. Based on Mr. Goeser'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 by notice mailed on December 3, 2012. The hearing was set for Thursday, December 13, 2012 at 8:00 a.m. Timothy Goeser is the appealing party. Mr. Goeser did not respond to the hearing notice instructions to provide a telephone number for the hearing. At 8:05 a.m., the Appeals Section staff notified the administrative law judge that Mr. Goeser's mother had contacted the Appeals Section at 8:00 a.m. to provide a telephone number where Mr. Goeser could be reached for the hearing: 712-755-3689. That number is the telephone for Mr. Goeser's grandparents' home. At 8:05 a.m., the administrative law judge attempted to reach Mr. Goeser at the number his mother had provided. The administrative law judge made contact with Mr. Goeser's grandmother, who advised that Mr. Goeser had just left with his grandfather and might not be back for two hours. Mr. Goeser's grandmother was unaware that anyone had called in her number as the number Mr. Goeser would use for the hearing. The administrative law judge left an appropriate message with the grandmother for Mr. Goeser. The message included the toll free number Mr. Goeser needed to call to participate in the hearing. The employer representative and three witnesses were available for the hearing. At 8:17 a.m., in the absence

of any contact from Mr. Goeser to indicate that he was available for the hearing he had requested and the hearing for which he had the burden of proof, the administrative law judge closed the hearing record and excused the employer representative and the three witnesses. As of the entry of this decision at 8:50 a.m., there has been no contact from Mr. Goeser.

The administrative law judge has conducted a careful review of the administrative file to determine whether the unemployment insurance decision should be affirmed.

Mr. Goeser appealed from the November 5, 2012, reference 01 decision that denied benefits effective October 14, 2012, based on an agency conclusion that he was unable to perform work due to illness. That decision was entered as a two-party decision, with Hy-Vee, employer account number 006858, named as the employer in interest. Four days later, a Workforce Development representative entered a November 9, 2012, reference 03 decision, that allowed benefits effective October 28, 2012, provided Mr. Goeser was otherwise eligible. The reference 03 decision was entered as a *one*-party decision without any input from Hy-Vee, an employer in interest.

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 November 5, 2012, reference 01 decision should be affirmed insofar as it denied benefits for the two-week period of October 14, 2012 through October 27, 2012 based on Mr. Goeser not meeting the work ability and availability requirement.

The administrative law judge further concludes that this matter should be remanded to the Claims Division for reconsideration of the November 9, 2012, reference 03 decision that allowed benefits effective October 28, 2012, provided the claimant was otherwise eligible. It appears that the employer in interest, Hy-Vee, was denied the due process right to provide input in connection with the entry of that decision.

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 November 5, 2012, reference 01, decision is affirmed. The decision that denied benefits effective October 14, 2012, based on a conclusion that the claimant was not able and available for work 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.

This matter is remanded to the Claims Division for reconsideration of the November 9, 2012, reference 03 decision that allowed benefits effective October 28, 2012, provided the claimant was otherwise eligible. It appears that the employer in interest, Hy-Vee, was denied the due process right to provide input in connection with the entry of that decision.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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