

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHANE D NIGHTSER**  
Claimant

**APPEAL NO. 07A-UI-02692-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLMAN DYNAMICS CORP**  
Employer

**OC: 02/11/07 R: 03  
Claimant: Respondent (1)**

871 IAC 26.8(5) – Decision on the Record

**STATEMENT OF THE CASE:**

The employer, Wellman Dynamics, Inc. (Wellman), filed an appeal from a decision dated March 8, 2007, reference 01. The decision allowed benefits to the claimant, Shane Nightser. After due notice was issued a hearing was held by telephone conference call on April 3, 2007. The claimant did not provide a telephone number where he could be contacted and did not participate.

The employer provided a telephone number for witness Nicole Bierle of (641)782-8521, ext 203. That number was dialed at 8:01 a.m. and the only response was a voice mail. A message was left indicating the hearing would proceed without her participation unless she called the toll-free number prior to the close of the record. Representative Dorothy Hayes did not participate without her witness. By the time the record was closed at 8:12 a.m. the employer had not responded to the message and did not participate.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

The parties were properly notified of the scheduled hearing on this appeal. No request for a postponement of the hearing was made as required by the hearing notice

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 8:12 a.m. At 8:14 a.m. Nicole Bierle returned the call and requested to participate. She was aware of the time and date for the hearing but indicated she had been called away for “an employee issue.”

**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.

871 IAC 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

The employer was not available at the time the hearing was scheduled to start and did not return the call until after the record had been closed. Ms. Bierle stated she had been called

away “for an employee issue” but there is nothing to indicate this was an emergency situation involving the health and safety of the employee. The employer did not establish good cause to reopen the hearing. Therefore, the employer’s request to reopen the hearing is denied.

**DECISION:**

The unemployment insurance decision dated March 8, 2007, reference 01, is affirmed. The decision holding the claimant qualified for benefits remains in effect.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs