

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANELLE D HARRIS
Claimant

APPEAL NO: 13A-UI-06289-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 04/28/13
Claimant: Appellant (1)

Iowa Code 96.5(2)a – Discharge
871 IAC 26.14(7)(b) and (c) – Request to Reopen Hearing
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

The claimant appealed a representative's May 15, 2013 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. A telephone hearing was held on July 2, 2013. The claimant did not respond to the hearing notice or participate in the hearing. Julia Church, the employer's representative, participated in the hearing and Suzi Sundholm, Matt Egger and Andrew Chen were available to testify on the employer's behalf.

The claimant did not contact the Appeals Sections until 30 minutes after the July 2 hearing had been scheduled to start. She requested that the hearing be reopened.

Based on the claimant's request to reopen the hearing, the administrative file and the law, the following findings of fact, reasoning and conclusions of law and decision are entered.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. Even though the claimant received the hearing notice before the July 2 scheduled hearing, she did not read the information on the hearing notice. The first time the claimant called to participate at the hearing scheduled at 9:30 a.m. on July 2 was at 10 a.m. on July 2. Even though the claimant received the hearing notice before July 2, she did not read the hearing instructions. She did not timely provide a telephone number at which she could be reached for the hearing. The claimant, the appealing party, did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. The claimant made a request to reopen the hearing.

REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read

or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c). The claimant did not establish good cause to reopen the hearing. Her request to reopen the hearing is denied.

A careful review of the information in the administrative file has been conducted to determine whether the unemployment insurance decision should be affirmed.

The unemployment insurance rules provide that when a party who has received due notice is unable to attend a hearing or request postponement within the prescribed time due to emergency or other good cause, the administrative law judge may, if no decision has been issued, reopen the record and schedule another hearing. If a decision has been issued, the decision may be vacated upon the administrative law judge'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 or 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 administrative law judge. Once a decision has become final as provided by statute, the administrative law judge officer has no jurisdiction to reopen the record or vacate the decision. 871 IAC 26.8(3). The rules further provide that a request to reopen a record or vacate a decision may be heard ex parte by an administrative law judge. The granting or denial of such a request may be used as a grounds for appeal to the Employment Appeal Board or the Department of Inspections and Appeals after the administrative law judge has issued a final decision in the case. 871 IAC 26.8(4). Finally, if good cause for postponement or reopening has not been shown, the administrative law judge shall make a decision based upon whatever evidence is properly in the record. 871 IAC 26.8(5).

The administrative law judge has carefully reviewed the information in the administrative file in the record and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed.

DECISION:

The representative's May 15, 2013 determination (reference 01) is affirmed. The determination that disqualified the claimant from receiving benefits remains in effect. This means, as of April 28, 2013, the claimant is disqualified from receiving unemployment insurance benefits. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs