

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MACTAR FAYE
Claimant

APPEAL NO. 13A-UI-12150-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QPS EMPLOYMENT GROUP INC
Employer

OC: 05/26/13
Claimant: Appellant (1)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The claimant, Mactar Faye, filed an appeal from a decision dated October 4, 2013, reference 04. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on November 20, 2013.

The claimant provided a telephone number where he could be contacted and that number was dialed at 9:59 a.m. The only answer was a voice mail and a message was left indicating the hearing would proceed without his participation unless he contacted the Appeals Bureau prior to the close of the record. He called at 10:07 a.m. and the same number was dialed again after being certified as being correct. At 10:08 a.m. the number was dialed and again the only response was a voice mail. Another message was left. By the time the record was closed a 10:20 a.m. the appellant had not returned the called

ISSUE:

The issue is whether claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the available evidence in the administrative record, the administrative law judge finds:

The parties were properly notified of the scheduled hearing on this appeal. There is no evidence the hearing notice was returned by the postal service as undeliverable for any reason.

The record was closed at 10:20 a.m. At 10:28 a.m. the appellant returned the call and it was recorded on the digital recording to avoid a repetition of the appellant not answering when the call was placed by Clear2There.

Mr. Faye was using a cell phone and the cell phone did not ring either time when the judge placed the calls. The notice of the hearing advises against the use of cell phones for this very reason.

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 the available administrative file and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed.

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.

Although the appellant may have intended to participate in the hearing, he failed to read or follow the hearing notice instructions which advise against the use of cell phones. The judge attempted to call the provided number twice and there was no response other than the voice mail. The appellant did not establish good cause to reopen the hearing. Therefore, the appellant's request to reopen the hearing is denied.

DECISION:

The unemployment insurance decision dated October 4, 2013, reference 04, is affirmed. The decision finding the claimant disqualified for benefits remains in effect.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs