

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JON MCEVOY
Claimant

APPEAL NO: 13A-UI-10473-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 08/18/13
Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct
871 IAC 26.14(7) - Late Call
Iowa Code § 17A.12-3 - Non-Appearance of Party
871 IAC 25.8(5) - Decision on the Record

STATEMENT OF THE CASE:

An appeal was filed from an unemployment insurance decision dated September 9, 2013, reference 01, that concluded Jon McEvoy (claimant) was not eligible for unemployment insurance benefits after a separation from employment from Hy-Vee, Inc. (employer). Notices of hearing were sent to both parties' last-known addresses of record for a telephone hearing to be held at 11:00 a.m. on October 14, 2013. The appellant did not participate in the hearing. The administrative law judge considered the record closed at 11:10 a.m. At 11:44 a.m., the claimant/appellant called the Appeals Section and requested that the record be reopened. Exhibit One was admitted into evidence.

ISSUE:

The issue is whether the unemployment insurance decision previously entered in this case should be affirmed.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant received the hearing notice prior to the October 14, 2013 hearing. The instructions inform the parties that if the party does not contact the Appeals Section and provide the phone number at which the party can be contacted for the hearing, the party will not be called for the hearing. The first time the claimant directly contacted the Appeals Bureau was on October 14, 2013, 44 minutes after the scheduled start time for the hearing. The claimant had not read all the information on the hearing notice, and had assumed that the Appeals Bureau would initiate the telephone contact even without a response to 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.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant has shown good cause to reopen the hearing. When a party responds to the notice of hearing after the record has been closed, the presiding officer shall not take the evidence but shall inquire as to why the party was late in responding to the notice of hearing. If the party establishes good cause, proper notice will be issued and the record shall be reopened. See 871 IAC 26.14(7)(b). However, it should be noted that a party's failure to read or follow the hearing notice instructions shall not be considered good cause. See 871 IAC 26.14(7)(c).

The preponderance of the evidence shows the claimant did not call and provide his telephone number to the Appeals Bureau for the hearing. He failed to read and follow the hearing notice instructions. Good cause to reopen the hearing has not been established.

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. 871 IAC 25.8(5). If the appellant does not present any evidence at the appeal hearing, the administrative law judge has no grounds in law or fact to reverse the initial decision.

DECISION:

The unemployment insurance decision dated September 9, 2013, reference 01, is affirmed. The decision disqualifying the claimant from receiving benefits remains in effect.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs