

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

COLIN SEIBERT
Claimant

APPEAL NO. 10A-UI-07131-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION
Employer

OC: 04/11/10
Claimant: Appellant (1)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

Colin Seibert appealed from an unemployment insurance decision dated May 4, 2010, reference 01, that denied benefits. Mr. Seibert requested an in-person hearing. An in-person hearing was scheduled for June 23, 2010 in Des Moines. Mr. Seibert did not appear or participate in the hearing. The employer also did not appear for the in-person hearing. Based on the appellant'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 in-person hearing on this appeal by notice mailed on June 2, 2010. The appellant, Colin Seibert, failed to appear for the hearing or request a postponement of the hearing as required by the hearing notice. There is no evidence the hearing notice was returned by the postal service as undeliverable for any reason.

The employer also failed to appear for the in-person hearing. The day before the hearing, the employer faxed a request to have the hearing representative *and* the employer's sole witness participate in the in-person hearing *by telephone*. That fax did not come to the attention of the administrative law judge until after the employer failed to appear in-person for the in-person hearing. The employer representative erroneously presumed the request would be approved and failed to have anyone appear in person for the in-person hearing. Thirty minutes after the scheduled start of the hearing, the employer representative made telephone contact with the administrative law judge in the hearing room, but failed to provide good cause for not appearing in-person, or having the employer witness appear in-person, for the in-person hearing.

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:

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.

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.

With regard to the employer's failure to appear in-person for the in-person hearing, Iowa Administrative Code rule 871 IAC 26.6(4) provides as follows:

In the discretion of the presiding officer to whom the contested case is assigned, witnesses or representatives may be allowed to participate via telephone in an in-person hearing, provided that each party has at least one witness present at the hearing site.

The administrative law judge did not approve the employer representative's request to appear by telephone and, under the above Administrative Code rule, could not have approved the employer's request to have its sole witness appear by telephone. The employer representative should not repeat the error it made in connection with the in-person hearing in this matter.

DECISION:

The Agency representative's May 4, 2010, reference 01, decision is affirmed. The decision denying benefits 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs