

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHANNON K HALE**  
Claimant

**APPEAL NO. 11A-UI-14519-MT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEARTLAND EMPLOYMENT SERVICES  
LLC**  
Employer

**OC: 09/25/11  
Claimant: Appellant (1)**

871 IAC 26.8(5) – Decision on the Record  
Section 96.5-1 – Voluntary Quit  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

An appeal was filed from an unemployment insurance decision dated October 14, 2011, reference 01, that concluded claimant was not eligible. A hearing was scheduled for December 2, 2011. The appellant did not participate in the hearing. Employer did not participate in the hearing. Based on 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. Exhibits A and One were admitted into evidence. Claimant called 30 minutes after the hearing start time. Claimant did not read and follow the instructions on the hearing notice. Claimant did not call in to inquire about the hearing for 30 minutes after it had started. Claimant's failure to participate is the result of her failure to read and follow the instructions on the hearing notice.

**ISSUE:**

The issue is whether the appeal is timely. The issue in this matter is whether claimant quit for good cause attributable to employer.

**FINDINGS OF FACT:**

The parties were properly notified of the scheduled hearing on this appeal. The appellant failed to provide a telephone number at which she could be reached for the hearing and did not participate in 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.

Claimant's fact-finding decision was sent to the wrong address. Claimant's appeal appears late because the wrong address was used.

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.

Iowa Code § 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant

to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Claimant's appeal is timely as the fact-finding decision was sent to the wrong address. Claimant appealed in a reasonable amount of time considering that the wrong address was used.

**DECISION:**

The unemployment insurance decision dated October 14, 2011, reference 01, is affirmed. The decision disqualifying claimant from receiving 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. Claimant's appeal was timely. Claimant's request to reopen the record is denied.

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Marlon Mormann  
Administrative Law Judge

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Decision Dated and Mailed

mdm/pjs