

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

APRIL GLASS

Claimant

APPEAL NO. 09A-UI-16824-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA

Employer

**Original Claim: 10/11/09
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

Wells Fargo Bank, NA (employer) appealed an unemployment insurance decision dated October 30, 2009, reference 01, which held that April Glass (claimant) was eligible for unemployment insurance benefits. A hearing was scheduled for December 14, 2009. The appellant did not participate in the 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:

The issue is whether the unemployment insurance decision should be affirmed.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The appellant did not participate in the hearing. The hearing notice was sent out on November 9, 2009. The appellant sent in a written postponement request late Friday afternoon on December 11, 2009. The administrative law judge received the postponement request on December 14, 2009, the same day as the scheduled hearing. The appellant requested a postponement because the employer's firsthand witness was on vacation. The administrative law judge denied the postponement request because it was not for good cause and it was not timely.

The administrative law judge has conducted a careful review of the available documents in the administrative file to determine whether the unemployment insurance decision should be affirmed.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 26.8(2), (3), (4) and (5) provide:

Withdrawals and postponements.

(2) A hearing may be postponed by the presiding officer for good cause, either upon the presiding officer's own motion or upon the request of any party in interest. A party's request for postponement may be in writing or oral, provided the oral request is tape-recorded by the presiding officer and is made not less than three days prior to the scheduled hearing. A

party shall not be granted more than one postponement except in the case of extreme emergency.

(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 request for the postponement was denied, as it was not made at least three days prior to the hearing as required by 871 IAC 26.8(2). The request for postponement was not due to an emergency but to lack of communication between the witness and the representative, and does not constitute good cause for the delay in requesting the postponement.

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.

DECISION:

The unemployment insurance decision dated October 30, 2009, reference 01, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw