

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

PATRICIA M POWELL  
310 – 30<sup>TH</sup> AVE CT APT 5  
MOLINE IL 61265

DILLARD DEPARTMENT STORES INC  
ATTN MS. BILLIE TREAT  
1600 CANTRELL RD  
LITTLE ROCK AR 72201-1110

Appeal Number: 04A-UI-12385-DT  
OC: 12/28/03 R: 03  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party request the Appeals Section to *reopen the record* at the address listed at the top of this decision, or appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 17A.12-3 – Non-appearance of Party  
871 IAC 26.8(5) – Decision on the Record  
Section 96.7-2-a(2) – Charges Against Employer's Account

STATEMENT OF THE CASE:

An appeal was filed from a representative's unemployment insurance decision dated November 8, 2004 (reference 03) that concluded Patricia M. Powell (claimant/respondent) was eligible for unemployment insurance benefits after a temporary separation from employment from Dillard Department Stores, Inc. (employer/appellant). A telephone hearing was scheduled for 1:00 p.m. on December 13, 2004. The employer received the hearing notice and responded by calling the Appeals Section on December 3, 2004. The employer indicated that Tammy Dill would be available at the scheduled time for the hearing at telephone number 309/797-1866,

extension 5001. However, when the administrative law judge called that number at the scheduled time for the hearing, Ms. Dill was not available. Therefore, the employer did not participate in the hearing. The claimant responded to the hearing notice and indicated that she would participate in the hearing. When the administrative law judge contacted the claimant for the hearing, she requested that the administrative law judge make a determination based upon a review of the information in the administrative file. 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.

#### FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The appellant failed to be available at the scheduled day and time set for the hearing and did not participate in the hearing or request a postponement of the hearing as required by 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.

The claimant established an unemployment insurance benefit year effective December 28, 2003. Her employment with the employer began in March of 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedures Act Section 17A.12-3 provides in pertinent part:

If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and make a decision in the absence of the party. ... If a decision is rendered against a party who failed to appear for the hearing and the presiding officer is timely requested by that party to vacate the decision for good cause, the time for initiating a further appeal is stayed pending a determination by the presiding officer to grant or deny the request. If adequate reasons are provided showing good cause for the party's failure to appear, the presiding officer shall vacate the decision and, after proper service of notice, conduct another evidentiary hearing. If adequate reasons are not provided showing good cause for the party's failure to appear, the presiding officer shall deny the motion to vacate.

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.

An employer's account is only chargeable if the employer is a base period employer. Iowa Code Section 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code Section 96.19-3. The claimant's base period began July 1, 2002 and ended June 30, 2003. The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

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 26.8(5).

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.

#### DECISION:

The representative's unemployment insurance decision dated November 8, 2004 (reference 03) is affirmed. The decision holding the claimant qualified for benefits remains in effect. The employer's account is not subject to charge in the current benefit year. 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.

ld/smc