

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA M COBEEN
Claimant

APPEAL NO: 11A-UI-10121-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RUBY TUESDAY
Employer

OC: 06/19/11
Claimant: Appellant (1/R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

The claimant appealed a representative's August 1, 2011 determination (reference 02) that held her ineligible to receive benefits as of June 19, 2011, because she was not available or willing to work the number of hours her occupation required her to work. A telephone hearing was held on August 24, 2011. The claimant responded to the hearing notice, but was not available for the hearing. Logan Gallantis appeared on the employer's behalf. Based on the administrative file and the law, the following findings of fact, reasoning and conclusions of law and decision are entered.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The claimant failed to provide a telephone number at which she could be reached for the hearing. She did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

A careful review of the information in the administrative file has been conducted to determine whether the unemployment insurance decision should be affirmed.

In the fact-finding interview claims specialist 62 took information about the claimant's employment separation but did not issue a decision on this issue.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance rules provide that when a party who has received due notice is unable to attend a hearing or request postponement within the prescribed time due to emergency or other good cause, the presiding officer may, if no decision has been issued, reopen the record and 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. 871 IAC 26.8(3). The rules further provide that 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 after the presiding officer has issued a final decision in the case. 871 IAC 26.8(4). Finally, 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. 871 IAC 26.8(5).

The administrative law judge has carefully reviewed the information in the administrative file in the record and concludes that the unemployment insurance determination previously entered in this case is correct and should be affirmed.

Pursuant to the rule, the claimant 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 claimant from participating in the hearing at its scheduled time.

This matter will be remanded to claims specialist 62 to make a written determination concerning the reasons for the claimant's employment separation. The claims specialist took information concerning the reasons for the claimant's separation and this information is part of the fact-finding notes for reference 02. Therefore, another fact-finding interview is not necessary, but a written determination concerning the reasons for the claimant's separation must be sent to the parties.

DECISION:

The representative's August 1, 2011 determination (reference 02) is affirmed. The claimant is not eligible to receive benefits as of June 19, 2011, because she did not establish that she was available for work. 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.

This matter is **Remanded** to claims specialist 62 to make a written determination regarding the reasons for the claimant's employment separation. Since information was obtained and recorded in the fact-finding notes for reference 02, another fact-finding interview is not necessary. The written determination shall be sent to both parties.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css