

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER L DAVENPORT
Claimant

APPEAL NO: 12A-UI-07506-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

K MART CORPORATION
Employer

OC: 04/22/12
Claimant: Appellant (1)

Section 96.3-5 – Benefit Calculation Related to Business Closure
Section 17A.12-3 – Non-appearance of Party
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

An appeal was filed from a representative's unemployment insurance decision dated June 18, 2012 (reference 02) that concluded Jennifer L. Davenport (claimant/respondent) was not eligible for unemployment insurance benefits recalculated as due to a business closure after a separation from employment from K Mart Corporation (employer/respondent). Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing to be held at 11:00 a.m. on July 16, 2012. The claimant/appellant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Based on the appellant's failure to participate in the hearing, the available information, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Should the representative's decision be affirmed on a basis of a review of the available information?

OUTCOME:

Representative's decision affirmed; regular benefits allowed, business closure recalculation denied.

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.

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

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedures Act at Iowa Code § 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.

Normally, the maximum total amount of benefits payable to an eligible individual during a benefit year is the lesser of twenty-six times the individual's weekly benefit amount or the total of the claimant's base period wage credits. However, under usual circumstances, if the claimant is laid off due to the claimant's employer going out of business at the factory, establishment, or other premises at which the claimant was last employed, the maximum benefits payable are extended to the lesser of thirty-nine times the claimant weekly benefit amount or the total of the claimant's wage credits. Iowa Code § 96.3-5.

The administrative file indicates that as of the time of the fact-finding determination by the Claims representative, the employer location at 2727 16th Ave. S.W. in Cedar Rapids still had some payroll activity and so was still somewhat active. The administrative law judge takes official notice of the fact that the employer has announced at least an intention to close that

business location. See, http://www.searsholdings.com/about/122711_close.htm. Even if the business location may not have been yet closed as of the time of the fact-finding, as it appears that it is likely that this status is subject to change, and since there has now been a change in fiscal quarters, the matter is remanded to the Claims section for further review to determine whether there has now been a business closure and, if so, to issue a further decision as may be necessary.

The administrative law judge has carefully reviewed the available information and concludes that the unemployment insurance decision previously entered in this case is correct as of the date of the decision 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 June 18, 2012 (reference 02) is affirmed. The decision disqualifying the claimant from receiving benefits calculated as due to a business closure 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. The matter is remanded to the Claims Section for review as to whether there has been a subsequent change in the business closure status.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw