

STATE OF WISCONSIN
LABOR AND INDUSTRY REVIEW COMMISSION
P O BOX 8126, MADISON, WI 53708-8126 (608/266-9850)

STEVEN D BINNS SR, Employee

UNEMPLOYMENT INSURANCE
DECISION

Hearing No. 04003017JF

ACTION MARINE INC. Employer

**SEE ENCLOSURE AS TO TIME
LIMIT AND PROCEDURES ON
FURTHER APPEAL**

An administrative law judge (ALJ) for the Division of Unemployment Insurance of the Department of Workforce Development issued a decision in this matter. A timely petition for review was filed.

The commission has considered the petition and the positions of the parties, and it has reviewed the evidence submitted to the ALJ. Based on its review, the commission agrees with the decision of the ALJ, and it adopts the findings and conclusion in that decision as its own.

DECISION

The decision of the administrative law judge is affirmed. Accordingly, the employer's request for hearing is denied and its appeal dismissed, and the department determination shall remain in effect.

Dated and mailed

SEP 14 2004

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/s/

James T. Flynn, Chairman

/s/

David B. Falstad, Commissioner

/s/

Robert Glaser, Commissioner

MEMORANDUM OPINION

The commission agrees with the administrative law judge's credibility determinations, and with his conclusion that, even if the employer's explanation for failing to appear at the properly noticed hearing on the merits of the employee's claim were credible, it does not meet the good cause standard.

A department determination awarding benefits was dated and mailed on June 4, 2004, and the employer filed a timely appeal of this determination on June 7, 2003. This determination, in its explanation of the appeal process, stated in bold type in capital letters, "Immediately start preparing for a hearing since hearing notices may be mailed only 6 days prior to the scheduled hearing."

The hearing notice was dated and mailed on June 18, 2004, and scheduled the hearing for 9:45 a.m. on June 30, 2004.

The employer did not contact the department prior to hearing or appear for the hearing.

The standard for failing to appear at a hearing is "good cause." This is, a party who misses a hearing is entitled to further hearing if the party establishes good cause for its initial failure to appear. The courts have defined this standard to be "excusable neglect," that is, the neglect a reasonably prudent person might commit in similar circumstances. *Kautzman v. Abraham Isaac & Jacob*, UI Dec. Hearing No. 98606107MW (LIRC Dec. 23, 1998).

The employer was on notice, since at least June 7, that they should be preparing for hearing since hearings could be scheduled on short notice. Despite this caution, the employer's owners left town to attend to other business matters, instructed a subordinate to set aside incoming mail that did not contain checks until their return, and did not see the hearing notice, according to their version of events, until the evening of June 29, which prevented them from preparing for the June 30 hearing and resulted in their failure to appear. However, it was the employer's responsibility to have in place a reliable mechanism for monitoring time-sensitive correspondence from the department, and their failure to do so does not provide good cause for their failure to appear at the properly noticed hearing on the merits of the employee's claim. *Gruszkowski v. TOPS Club, Inc.*, UI Hearing No. 99604747MW (LIRC Sept. 23, 1999). Moreover, the employer made no effort to contact the department prior to hearing to determine whether its circumstances would qualify for a postponement or other consideration, or to notify the department that it did not intend to appear for the hearing. These are not the actions of a reasonably prudent party. *Logemann v. Wal-Mart Associates, Inc.*, UI Hearing No. 03605502MW (LIRC Feb. 26, 2004).