

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

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KELLY J KOEBERL, Employee

UNEMPLOYMENT INSURANCE  
DECISION

Hearing No. 02608950MW

A-ARCADE DRIVERS SCHOOL, Employer  
ZEPEKA INC

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

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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**

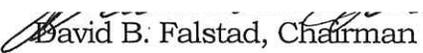
The decision of the administrative law judge is affirmed. Accordingly, the employer's request for a rehearing on the merits is denied, and the appeal tribunal decision issued on September 19, 2002, is reinstated.

Dated and mailed

MAR 13 2003

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/s/

 David B. Falstad, Chairman

/s/

 James A. Rutkowski, Commissioner

James T. Flynn, Commissioner

## MEMORANDUM OPINION

The employer arrived at the scheduled hearing after its conclusion, and requested a rehearing as a result.

Pursuant to Wis. Admin. Code § 140.13, an arrival at the hearing site more than 15 minutes after the scheduled starting time of the hearing may be deemed a failure to appear. Pursuant to Wis. Stat. § 108.09(4)(d), if the appellant fails to establish good cause for the failure to appear, the appeal must be dismissed. Good cause for failing to appear at a hearing is akin to "excusable neglect," the neglect a reasonably prudent person might be expected to commit in similar circumstances. *Manowske v. US Bank National Association*, UI Hearing No. 02003063MD (LIRC Oct 2, 2002); *Smith v. Kenosha Youth Foundation*, UI Hearing No. 00601459RC (LIRC April 28, 2000)

Here, the employer offers two excuses for his failure to appear prior to the conclusion of the hearing, i.e., the rainy weather which caused traffic delays, and his unfamiliarity with the downtown Milwaukee area. However, the employer was aware that it was raining and of the obvious effect bad weather has on traffic, but failed to exercise the judgment of a reasonably prudent person and plan accordingly. Moreover, the commission has held that parties are obliged to familiarize themselves with the hearing location in advance of the hearing, so as to be able to arrive at the hearing in a timely manner. *Smith, supra*; *Walsh v. Gateway Associated Service, Inc.* (LIRC June 18, 1992)

The commission concludes that the employer failed to establish good cause for his failure to appear at the scheduled hearing.