

871—26.7(17A,96) Withdrawals, dismissals, and continuance.

26.7(1) An appeal may be withdrawn at any time prior to the issuance of a decision upon the request of the appellant and with the approval of a presiding officer. Requests for withdrawal may be made in writing or orally, provided the oral request is recorded by a presiding officer.

An appeal may be dismissed upon the request of a party or in the agency's discretion when the issue or issues on appeal have been resolved in the appellant's favor.

26.7(2) A hearing may be postponed by the presiding officer for reasons stated in 481—subrule 10.17(3), either upon the presiding officer's own motion or upon the request of any party in interest. A party's request for postponement should be made not less than three days prior to the scheduled hearing and may be in writing or oral, provided the oral request is recorded by the presiding officer. A party shall not be granted more than one postponement except in the case of extreme emergency.

26.7(3) For good cause shown, the presiding officer may reopen the record, and with notice to all parties, schedule another hearing.

"*Good cause*," for purposes of this rule, is defined as an emergency circumstance that is beyond the control of the party and that prevents the party from being able to participate in the hearing. Examples of good cause include but are not limited to death, sudden illness, or accident involving the party or the party's immediate family (spouse, partner, children, parents, siblings) or other circumstances evidencing an emergency situation that was beyond the party's control and was not reasonably foreseeable.

Examples of circumstances that do not constitute good cause include but are not limited to a lost or misplaced notice of hearing, confusion as to the date and time for the hearing, failure to follow the directions on the notice of hearing, oversleeping, or other acts demonstrating a lack of due care by the party.

26.7(4) If necessary, the presiding officer may hear, *ex parte*, additional information regarding the request for reopening. The granting or denial of such a request may be used as grounds for appeal to the employment appeal board of the department of inspections, appeals, and licensing upon the issuance of the presiding officer's final decision in the case.

26.7(5) If good cause for reopening has not been shown, the presiding officer may make a decision based upon whatever evidence is properly in the record or, in appropriate cases, may enter default as set forth in rule 871—26.13(17A,96).

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