

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**OMAR E BERRICHI**  
Claimant

**APPEAL NO: 09A-UI-06950-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS CORP**  
Employer

**OC: 04/05/09**  
**Claimant: Appellant (5)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Omar E. Berrichi (claimant) appealed a representative's May 1, 2009 decision (reference 02) that held the claimant ineligible to receive because an injury prevented him from working. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 1, 2009. At the time of the scheduled hearing, 2:00 p.m., the claimant had not responded to the hearing by contacting the Appeals Section prior to hearing to provide the phone number at which he could be contacted to participate in the hearing. Rachel Watkins appeared on the employer's behalf. Watkins and the interpreter, Magdi Salama, agreed to wait for 15 minutes to give the claimant an opportunity to contact the Appeals Section and participate in the hearing. When the claimant had not contacted by 2:15 p.m., the hearing was closed and the interpreter and employer were excused.

After the hearing had been closed, the claimant contacted the Appeals Section to participate in the hearing. The claimant made a request to reopen the hearing. Based on the administrative record, the claimant's request to reopen the hearing, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Did the claimant establish good cause to reopen the hearing?

Is the claimant able to and available for work as of April 5, 2009?

**FINDINGS OF FACT:**

The claimant started working for the employer on June 17, 2008. The claimant had surgery on his right hand in November 2008. The claimant learned he had problems with his left hand as well. The claimant understood sometime after February 1, 2009, his physician restricted him from doing any work until he was seen by the physician again on May 13, 2009.

The claimant established a claim for benefits during the week of April 5, 2009. He filed claims for the weeks ending April 11, 18 and 25, 2009.

The claimant received the hearing notice for the June 1, 2009 hearing in mid-May. The claimant noticed the date and time of the hearing, but he did not read the information on the hearing notice. The claimant asserted he could not read or understand English. However, when he read the large bolded information, he realized he had made a mistake when he did not contact the Appeals Section to provide the phone number at which he could be contacted before the scheduled hearing.

#### **REASONING AND CONCLUSIONS OF LAW:**

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 AC 26.14(7)(b) and (c).

Although the claimant asserted he did not understand or read English, during his phone conversation with the administrative he read the hearing instructions out loud. He demonstrated he understood he made a mistake when he had not called the Appeals Section before June 1, 2009. The claimant did not establish good cause to reopen the hearing. Therefore, his request to reopen the hearing is denied.

Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code section 96.4-3. Based on the claimant's understanding of his physician's restrictions, the claimant is not able to or available for work as of April 5, 2009. (This date is different than the date indicated in the representative's decision.

#### **DECISION:**

The claimant's request to reopen the hearing is denied. The representative's May 1, 2009 decision (reference 02) is modified, but the modification has no legal consequence. Based on the claimant's understanding of his physician's work restrictions, as of April 5, 2009, the claimant is not able to or available for work. Therefore, as of April 5, 2009, the claimant is not eligible to receive benefits. This disqualification continues until he reopens his claim and establishes that he is able to and available for work.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs