

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WENDELL E TROUT**  
Claimant

**APPEAL NO. 11A-EUCU-00319-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DEERY BROTHERS INC**  
Employer

**OC: 06/13/10**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge  
Section 96.6-2 – Untimely Protest  
871 IAC 26.8(5) – Decision on the Record

**STATEMENT OF THE CASE:**

Deery Brothers, Inc. filed a timely appeal from a representative's decision dated March 17, 2011, reference 02, which held the claimant eligible to receive unemployment insurance benefits finding that the employer failed to file a timely protest. A telephone hearing was scheduled for April 13, 2011 with notice being given that the issues to be considered to be whether the protest was timely, whether the claimant was discharged for misconduct or whether the claimant voluntarily left work for good cause attributable to the employer. The employer, the appellant herein, did not respond to the notice of hearing. Claimant Wendell Trout participated personally and provided sworn testimony. Based upon the appellant's failure to participate in the hearing, the administrative file and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

**ISSUE:**

At issue in this matter is whether the decision previously entered should be affirmed.

**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 the employer 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 administrative file and record and determined that Mr. Trout was discharged from employment for no disqualifying reason and that the evidence in the hearing record does not establish that the employer filed a timely protest.

**REASONING AND CONCLUSIONS OF LAW:**

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.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or

incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The administrative law judge has carefully reviewed the evidence in the record and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed.

**DECISION:**

The unemployment insurance decision dated March 17, 2011, reference 02, is affirmed. The decision allowing benefits without disqualification remains in effect. The decision will become final unless an appeal is filed with the Employment Appeal Board within 15 days of the date of this decision.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

pjs/pjs