

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**ADAM E SUTHERLAND
210 NW STATE ST – APT 7
ANKENY IA 50023**

**HY-VEE INC
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283**

**HY-VEE INC
c/o TALX UC EXPRESS
3799 VILLAGE RUN DRIVE #511
DES MOINES IA 50317**

**Appeal Number: 050-UI-08807-RT
OC: 05-22-05 R: 02
Claimant: Respondent (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 - Voluntary Quitting
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Hy-Vee, Inc., filed a timely appeal from an unemployment insurance decision dated June 10, 2005, reference 01, allowing unemployment insurance benefits to the claimant, Adam E. Sutherland. After due notice was issued for a telephone hearing on September 13, 2005, at 3:00 p.m., the administrative law judge noted that the claimant had not called in a telephone number where any witnesses could be reached. The administrative law judge was able to reach the employer's witness, Sheila Laing and the employer's representative, David Williams of TALX UC Express. The employer was ready to proceed with the hearing. However, the claimant had not called in a telephone number where he or any of his witnesses could be reached for the hearing as instructed in the notice of appeal. The administrative law judge informed Mr. Williams that he was going to attempt to reach the claimant at other

telephone numbers in the file because the administrative law judge did not want a second remand on this matter for a third hearing.

A hearing had initially been held on July 5, 2005, without the claimant's participation because the claimant had not called in a telephone number where he could be reached for that hearing. By a decision dated July 14, 2005, the administrative law judge who conducted that hearing reversed the decision of the department representative and denied benefits to the claimant. The claimant appealed that decision to the Employment Appeal Board. By decision dated August 24, 2005, the Employment Appeal Board remanded this matter for another hearing. A notice for this hearing was sent to the claimant on August 29, 2005 at a new address used by the Employment Appeal Board and also the same address that appears on the claimant's appeal to the Employment Appeal Board and the address that the claimant eventually confirmed was correct. Nevertheless, the claimant did not call in a telephone number where he could be reached for the hearing.

The administrative law judge called the claimant at a number in Iowa Workforce Development records. A female person answered the telephone and indicated that the claimant was not there but that he would be back in ten minutes. The administrative law judge informed the female person who answered the phone that he was not going to wait for the claimant because the hearing was scheduled at 3:00 and it was already 3:04 p.m. Just then the claimant walked in and the administrative law judge spoke to the claimant. The administrative law judge asked the claimant why he had not called in a telephone number. The claimant seemed to indicate at first that he had not received the notice. The administrative law judge called the claimant on that, informing the claimant that the notice had been sent to the address used by the Employment Appeal Board and the address on the claimant's appeal to the Employment Appeal Board. The claimant confirmed that the address was correct and then conceded that he had received the notice but had simply forgot to call in a telephone number where he could be reached for the hearing. The claimant was fully aware that he needed to do so because he already had an appeal to the Employment Appeal Board and a remand because he had not called in a telephone number for the first hearing. The administrative law judge asked the claimant if he wanted to have a hearing and the claimant was non-committal. The administrative law judge expressed his displeasure with the claimant's failure to call in a telephone number and asked again if the claimant wanted a hearing. The claimant said that he thought he had been denied benefits. The administrative law judge explained that that decision had been appealed to the Employment Appeal Board and remanded and this hearing was going to determine his benefits. The administrative law judge again asked the claimant if he wanted a hearing and the claimant responded no, he did not want a hearing. The administrative law judge then informed the claimant that he would not have a hearing. The administrative law judge then called Mr. Williams and informed Mr. Williams that the claimant did not want a hearing and the administrative law judge would not be conducting such a hearing. The administrative law judge concludes that since there was a prior hearing scheduled and held and a decision issued by an administrative law judge already, it would not be necessary to have another hearing with just the employer participating since the claimant did not want a hearing. The administrative law judge concluded to simply adopt the decision by the prior administrative law judge, which decision is dated July 14, 2005 in appeal number 05A-UI-06298-CT. By this reference, that decision is incorporated herein as if it was completely and fully set forth in this decision. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having examined the record, the administrative law judge finds: By decision dated June 10, 2005, reference 01, the claimant was determined to be eligible to receive unemployment insurance benefits because records indicate he was dismissed from work on April 18, 2005 for excessive absenteeism, but the claimant's absences were due to illness and were properly reported and under those circumstances there is no misconduct. The employer timely appealed that decision in appeal number 05A-UI-06298-CT. The hearing was scheduled for and held on July 5, 2005 without the claimant's participation because the claimant had not called in a telephone number where he or any of his witnesses could be reached. The administrative law judge issued a decision dated July 14, 2005, reversing the decision of the Workforce Development representative and denying the claimant unemployment insurance benefits. The claimant then appealed this decision to the Employment Appeal Board claiming that the claimant did not receive a notice because it was sent to an old address. The Employment Appeal Board by decision dated August 24, 2005, remanded this matter for another hearing. Another hearing was scheduled for September 13, 2005 at 3:00 p.m. under appeal number 050-UI-08807-RT, which is the appeal herein. A hearing notice was sent to the claimant at a new address, 210 NW State Street, Apartment 7, Ankeny, Iowa, 50023. That was the address on the claimant's appeal to the Employment Appeal Board and the decision from the Employment Appeal Board and further an address confirmed by the claimant. However, the claimant again, did not call in a telephone number where he could be reached for the hearing. The administrative law judge found a telephone number for the claimant and called it and eventually spoke to the claimant. The claimant initially stated that he had not received the notice. When the administrative law judge pointed out that the notice was sent to the address noted above and the claimant confirmed that that was his address, the claimant conceded that he had received the notice, but that he had forgotten to call in a telephone number. The administrative law judge does not understand how the claimant could forget to call in a telephone number for a hearing when the claimant had appealed to the Employment Appeal Board and obtained a remand for his failure to call in a telephone number for the prior hearing. The administrative law judge explained this to the claimant and asked the claimant if he wanted a hearing. The claimant responded that he did not want a hearing. The claimant was most cavalier concerning this matter or unemployment insurance benefits or the hearings therefore. The administrative law judge then called the employer's representative, David Williams of TALX UC Express and explained that the claimant did not want a hearing. The administrative law judge informed Mr. Williams that he was not going to subject the employer to a second hearing because there had already been a prior hearing held and evidence taken and a decision based upon that hearing by an administrative law judge. Therefore, no hearing was held by this administrative law judge.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. He is.

As noted in the findings of fact, the administrative law judge concludes that it is not appropriate for him to conduct a second appeal hearing when the claimant did not call in a telephone number for the first hearing and chose not to participate in the second hearing. Accordingly, the administrative law judge adopts the decision dated July 14, 2005, in appeal number

05A-UI-06298-CT in its entirety, as if that decision was completely and fully set forth herein. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily without good cause attributable to the employer and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

The administrative law judge concludes that the claimant has received unemployment insurance benefits since his separation from the employer herein on or about May 11, 2005, and filing for such benefits effective May 22, 2005, in the amount of \$310.00 for benefit week ending June 4, 2005. Those benefits were cancelled and an adjustment was made to his overpayment of \$109.26 leaving a balance overpaid of \$200.74. The administrative law judge further concludes that the claimant is not entitled to these benefits and is overpaid unemployment insurance benefits in the amount of \$200.74. The administrative law judge finally concludes that these benefits must be recovered in accordance with the provisions Iowa law.

DECISION:

The representative's decision of June 10, 2005, reference 01, is reversed. The claimant, Adam E. Sutherland, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he left his employment voluntarily without good cause attributable to the employer. He has been overpaid unemployment insurance benefits in the amount of \$200.74.

dj/kjf