

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WILLIAM D WATSON**  
Claimant

**APPEAL NO. 11A-UI-07457-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS CORP**  
Employer

**OC: 04/24/11**  
**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct  
871 IAC 26.8(5) – Decision on the Record

**STATEMENT OF THE CASE:**

An appeal was filed from a representative's decision dated May 26, 2011, reference 01, which concluded that William Watson was discharged for misconduct in connection with his employment with Cargill Meat Solutions Corporation. A telephone hearing was scheduled for 11:00 a.m. on June 30, 2011. The claimant, the appellant herein, responded to the notice of hearing but was not available at the number provided at the scheduled time of the hearing.

The administrative law judge made two attempts to reach Mr. Watson at the schedule time of the hearing. The telephone was allowed to ring at least ten times on both occasions but there was no answer on either occasion. At approximately 11:25 a.m., Mr. Watson and his union representative contacted the Appeals Bureau. Mr. Watson had gone to the union hall five minutes before the hearing time. The representative who had intended to participate with him was not available and he was assigned a new representative for the hearing. Neither Mr. Watson nor the new representative notified the Appeals Bureau before the hearing that a different number was to be called for the hearing. The call at 11:25 was the first indication that a new number was to be used. The administrative law judge did not find there was good cause for the failure to participate at the scheduled time. Nor was there good cause for the failure to notify the Appeals Bureau of the new number within five minutes after the schedule time.

Based on 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 be available at the telephone number he provided 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 to determine whether the unemployment insurance decision should be affirmed.

**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.

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. Mr. Watson was absent due to personal business five times in 2011 before his April 18, 2011 separation. Although his final absence was due to illness, it was not timely reported. He did not call until 43 minutes after the start of his shift rather than the 30 minutes before the shift as required. Excessive unexcused absenteeism was established by the evidence of record.

Pursuant to the rule, the appellant must make a written request to the administrative law judge within 15 days after the mailing date of this decision asking that the hearing be reopened. The written request should be mailed to the administrative law judge at the address listed at the beginning of this decision and must explain the emergency or other good cause that prevented the appellant from participating in the hearing at its scheduled time.

**DECISION:**

The unemployment insurance decision dated May 26, 2011, reference 01, is affirmed. The decision disqualifying the claimant from receiving benefits remains in effect. This decision will become final unless a written request establishing good cause to reopen the record is made to the administrative law judge or an appeal is filed with the Employment Appeal Board within 15 days of the date of this decision.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs