

**IOWA WORKFORCE DEVELOPMENT DEPARTMENT  
UNEMPLOYMENT INSURANCE APPEALS SECTION  
1000 EAST GRAND AVE  
DES MOINES IA 50319**

**Appeal Number: 05A-UI-06648-SWT  
OC: 05/22/05 R: 03  
Claimant: Appellant**

**CARLOS A CRUZ  
1815 FRANKLIN ST  
WATERLOO IA 50703**

**TYSON FRESH MEATS INC  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283**

**CORBETT ALLEN LUEDEMAN  
ATTORNEY AT LAW  
210 – 2<sup>ND</sup> ST SE STE 302  
CEDAR RAPIDS IA 52401**

871 IAC 26.9 – Whether Sanctions Should Be Imposed for Failing to Answer Interrogatories

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated June 21, 2005, reference 01, that concluded he was discharged for work-connected misconduct. Prior to a final hearing being scheduled in this matter, the claimant filed interrogatories. The employer has not answered the interrogatories. A telephone hearing was held on August 23, 2005, to determine whether sanctions should be imposed on the employer for failing to answer the interrogatories. Proper notice of the hearing was given to the parties. The claimant participated in the hearing with his representative, Corbett Luedeman, attorney at law. David Duncan, the employer's representative, was called at the time of the hearing, but he was not available and did not respond to the message left on his voicemail.

**FINDINGS OF FACT:**

Interrogatories submitted by the claimant were served on the employer by certified mail, return receipt requested, on July 21, 2005. The cover letter accompanying the interrogatories stated that the employer had until July 29, 2005, to answer the interrogatories. The employer failed to answer the interrogatories by July 29, 2005. A certified letter dated

August 2, 2005, granted the employer an additional 10 days to respond to the discovery. The letter stated that failure to respond to the discovery could result in sanctions being imposed, including the dismissal of the appeal, prohibition against presenting evidence, or prohibition from participating in the contested case hearing. The return receipt establishes that the employer received the letter on August 5, 2005. As of the date of the hearing, the employer had failed to answer the interrogatories or produce any information requested by the claimant.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether sanctions should be imposed for failing to answer interrogatories.

871 IAC 26.9(8) provides:

(8) Upon application by any party or upon the presiding officer's own motion, the presiding officer may impose sanctions for failure to make discovery; however, sanctions shall not be imposed without prior specific notice from the presiding officer of the contemplated sanction, opportunity to be heard, and, if necessary, further opportunity to cure its failure. The sanctions may include the following:

- a. The granting of a postponement to a party demonstrably prejudiced by the failure;
- b. The exclusion of testimony of witnesses not identified in response to a specific request for such information;
- c. The exclusion from the record of those exhibits not identified in response to a specific request for such information;
- d. The exclusion of the party from participation in the contested case proceeding;
- e. The dismissal of the party's appeal.

The employer is in default for failing to answer interrogatories and to produce the documents that have been requested. The employer was warned that sanctions could be imposed as a result of its failure to comply with the discovery request, including prohibiting the employer from participating in the hearing. The employer was aware that a hearing had been scheduled regarding sanctions but was not available to participate. Good cause has been shown for imposing sanctions at this time. The employer shall not be allowed to participate in the final evidentiary hearing, which is scheduled for September 1, 2005, at 1:00 p.m.

#### ORDER:

The employer is found to be in default for failing to answer interrogatories and for failing to produce documents. The administrative law judge imposes the sanction of prohibiting the employer from participating in the final evidentiary hearing in this matter.

Steve Wise  
Administrative Law Judge

Dated and mailed:

saw:kjw

Copies to all parties of record.