

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHADE G RIAK**  
Claimant

**APPEAL NO. 100-UI-07655-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT & COMPANY**  
Employer

**OC: 11/15/09**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

This matter was remanded by the employment appeal board. Chade Riak appealed from an unemployment insurance decision dated December 16, 2009, reference 02, that denied benefits. A telephone hearing was scheduled for July 15, 2010. Mr. Riak did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. The employer was available through Jenny Mora. 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:**

Decision on the record.

**FINDINGS OF FACT:**

This matter was remanded for a new hearing after the claimant failed to participate in a prior hearing set for February 9, 2010. Mr. Riak's notice for that hearing had been returned by the United States Postal Service as undeliverable to the last-known address of record for Mr. Riak. See Appeal Number 09A-UI-19519-JTT. In connection with Mr. Riak's appeal to the employment appeal board, Mr. Riak provided an updated address: 1338 Clark Street, Des Moines, IA 50514. See Hearing Number 10B-UI-19519. In connection with the employment appeal board remand, the Appeals Section updated Mr. Riak's address of record to the address he had provided to the employment appeal board. On June 10, 2010, Workforce Development mailed notice of a July 15, 2010 appeal hearing to Mr. Riak's updated and last-known address of record. Mr. Riak did not respond to the hearing notice instructions to provide a telephone number for the hearing. The notice mailed to Mr. Riak at his last-known address of record was not returned by the United States Postal Service.

The administrative law judge has conducted a careful review of the administrative file to determine whether the unemployment insurance decision should be affirmed. Mr. Riak's December 29, 2009 appeal from the December 16, 2009, reference 02 decision is on its face late.

**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 evidence in the record and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed. The claimant's appeal is on its face late. Without evidence from the claimant to establish good cause to treat the late appeal as a timely appeal, the administrative law judge would have no legal authority to disturb the December 16, 2009, reference 02, that denied benefits. In addition, even if the appeal were timely, based on the administrative file materials from the December 15, 2009 fact-finding interview, the administrative law judge would reach the same conclusion as the December 16, 2009, reference 02 decision, that the claimant was discharged for misconduct in connection with the employment and is disqualified for benefits.

Pursuant to the administrative code rule, the appellant must make a written request to the administrative law judge that the hearing be reopened within 15 days after the mailing date of this decision. 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 Agency representative's December 16, 2009, reference 02, decision is affirmed. The decision denying 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 within 15 days of the date of this decision.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs