IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ROBERT F BRENO
Claimant

CARGILL MEAT SOLUTIONS CORPORATION
Employer

APPEAL NO. 14A-UI-00589-MT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/24/13
Claimant: Appellant (1)

871 IAC 26.8(5) – Decision on the Record
Section 96.5-2-a – Discharge for Misconduct
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

An appeal was filed from an unemployment insurance decision dated December 16, 2013, reference 01, that concluded claimant was not eligible. A hearing was scheduled for February 10, 2014. The appellant did not participate in the hearing. The parties were properly notified of the scheduled hearing on this appeal. As shown on the Clear 2 There hearing control screen, there is no telephone number listed for the appellant or for employer. This proves that the appellant failed, prior to the hearing date and time, to provide a telephone number at which appellant could be reached for the hearing and did not participate for that reason. Furthermore, appellant did not request a postponement of the hearing as required by the hearing notice instructions.

Based on 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. The administrative file is admitted as Exhibit One and official notice is taken of the Clear 2 There hearing control screen proving that Appellant did not call prior to the start of hearing. Fact-finding note are not part of the administrative file unless requested by the parties as shown by the hearing notice instructions, "Information submitted for the fact-finding interview is not automatically part of the record…"

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct. The issue is whether the appeal is timely.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. Having reviewed all of the available evidence in the administrative record, the administrative law judge finds: The parties were properly notified of the scheduled hearing on this appeal. As shown on the Clear2There hearing control screen, there is not a phone number listed for the appellant. This

means the appellant failed, prior to the hearing date and time, to provide a telephone number at which they could be reached for the hearing and did not participate or request a postponement of the hearing as required by the hearing notice instructions. There is no evidence the hearing notice was returned by the postal service as undeliverable.

The administrative law judge has conducted a careful review of the administrative file to determine whether the unemployment insurance decision should be affirmed.

Claimant appealed January 16, 2014. Claimant did not receive the adverse decision due to relocation. The case was appealed after actual notice of an adverse decision.

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.
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> (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.

Pursuant to the 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.

Iowa Code section 96.6-2 provides:

> 2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly

> examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Claimant's appeal is timely because claimant did not receive actual notice of the adverse decision.

DECISION:

The unemployment insurance decision dated December 16, 2013, reference 01, is affirmed. The decision disqualifying 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 within 15 days of the date of this decision. Claimant's appeal is timely.

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Marlon Mormann
Administrative Law Judge
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Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-242-5144

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Decision Dated and Mailed

mdm/pjs