

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

YINNI J MEJIA
Claimant

APPEAL NO. 13O-UI-04326-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 12/02/12
Claimant: Appellant (1)

Section 96.5(2)a – Discharge
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant, Yinni Mejia, filed an appeal from a decision dated December 27, 2012, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on February 13, 2013.

The Employment Appeal Board ordered a reopening of the record for the administrative law judge to consider the claimant's late call. The current hearing was scheduled for May 14, 2013. The claimant did not provide a telephone number where he could be contacted. Ike Rocha was retained to act as interpreter if necessary. The employer, Swift, was prepared to participate by Luis Meza.

The claimant did not call in to provide a phone number prior to the closing of the record at 11:18 a.m. No hearing was held in the absence of the party requesting the record be reopened.

ISSUE:

The issue is whether the appeal is timely.

FINDINGS OF FACT:

At the initial hearing on February 13, 2013, all the parties were advised if they disconnected during the hearing the administrative law judge would not call back until they contacted the Appeals Section to indicate they had found another phone to use or their current phone was working again.

This was not specifically addressed to the use of cell phones but of all phones.

The claimant lost the connection during the opening statement and did not call back before the record was closed. A decision was issued finding the appeal was not timely and it was appealed to the Employment Appeal Board. The claimant alleged he had made a phone call to the Appeals Section the day after the scheduled hearing. The case was remanded for the purpose of "developing the record" on the issue of the late call.

The claimant did not call in for the hearing scheduled May 14, 2013, at 11:00 a.m. There is nothing in the record except for the claimant's unsupported assertion he called in the day after the hearing. Nothing is in the file such as a phone record to corroborate this statement.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.6-2 provides in pertinent part:

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. . . . 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.

The administrative law judge cannot develop the record in the absence of the party making the assertion about the late call. The judge therefore considers the claimant has failed to meet his burden of proof as to why the alleged late call was made 24 hours after the hearing was closed, what attempts he made to find an area where he had a signal for his cell phone, and what attempts he made to find a land line to continue the hearing.

He did not provide evidence or testimony as to the reason the appeal was late.

DECISION:

The decision of the representative dated December 27, 2012, reference 01, is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect. The claimant is disqualified for unemployment benefits.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs