

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHESTER M JONES**  
Claimant

**APPEAL NO. 15A-UI-09502-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FAREWAY STORES INC**  
Employer

**OC: 07/26/15**  
**Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Fareway Stores, Inc. filed a timely appeal from a representative's decision dated August 17, 2015, reference 01, which held claimant eligible to receive unemployment insurance benefits finding that the claimant was dismissed from work on July 24, 2015 for excessive absences but finding that the absences were due to illness and were properly reported. The employer alleged in its appeal that the claimant had voluntarily quit after failing to report or provide notice of his absences for three consecutive work days. A telephone hearing was scheduled for and held on September 9, 2015. Fareway Stores, Inc., the appellant herein, did not respond to the notice of hearing. The claimant, Chester Jones, participated and testified. Based upon the appellant's failure to participate in the hearing, the administrative file, the claimant's testimony and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits and 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 provide a telephone number at which the appellant could be reached 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 and conducted an administrative hearing to determine whether the unemployment insurance decision should be affirmed. The employer's allegation in its statement of appeal that the claimant had failed to report for work for three consecutive work days and had not provided notice to the employer was addressed. The claimant had left work on July 24, 2015 due to back spasms related to a previous workers' compensation injury at work and the claimant had been instructed by the emergency room doctor not to return to work until July 28, 2015. Mr. Jones had specifically informed Joe Hoit, the assistant manager, of the doctor's orders and had offered

to provide a copy to the company. Mr. Hoit instructed the claimant that would not be necessary for him to provide the doctor's note at that time but that he could provide the doctor's note when he returned to work. Mr. Jones provided the doctor's note to the employer on July 28, 2015, the date that he returned to work and was discharged by the employer.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Admin. Code r. 871-26.8(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 available evidence in the administrative file and during the hearing 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.

**DECISION:**

The representative's decision dated August 17, 2015, reference 01, is affirmed. The representative's decision remains in effect.

---

Terence P. Nice  
Administrative Law Judge

---

Decision Dated and Mailed

pjs/pjs