

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MAGDALENO VALENCIA-ALVAREZ
Claimant

APPEAL NO: 06A-UI-08133-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 07/16/06 R: 04
Claimant: Respondent (6)

871 IAC 26.8(1) - Withdrawal of Appeal

STATEMENT OF THE CASE:

An appeal was filed from a representative's decision dated August 3, 2006 (reference 01). A hearing was scheduled for September 14, 2006. Magdaleno Valencia-Alvarez (claimant/respondent) responded to the hearing notice and indicated that he would participate in the hearing. Tyson Fresh Meats, Inc. (employer/appellant) received the hearing notice and responded by calling the Appeals Section and indicating that Eva Garcia would be participate in the hearing on behalf of the employer. However, when the administrative law judge called the number provided for Ms. Garcia at the scheduled time for the hearing, the employer announced that it was choosing not to participate in the hearing. Since the employer is the appellant in this case, the administrative law judge concludes that the employer's decision not to participate in the hearing is a withdrawal of its appeal. Based on a review of the administrative file and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Should the appellant's withdrawal of its appeal be granted?

FINDINGS OF FACT:

The employer/appellant has declined to participate in the hearing with no additional information provided from that which was made available prior to the issuance of the representative's decision.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 26.8(1), (3), (4) and (5) provides:

(1) An appeal may be withdrawn at any time prior to the issuance of a decision upon the request of the appellant and with the approval of the presiding officer to whom the case is assigned. Requests for withdrawal may be made in writing or orally, provided the oral request is tape-recorded by the presiding officer.

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 employer's decision not to participate in the hearing on its appeal without further information should be treated as a request of the appealing party to withdraw the appeal and should be granted.

DECISION:

The decision of the representative dated August 3, 2006 (reference 01) is affirmed. The request of the appealing party to withdraw the appeal is approved, and the decision of the representative shall stand and remain in full force and effect. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs