IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ASAAD R JABIR
Claimant

LOFFREDO FRESH PRODUCE CO INC
Employer

APPEAL NO. 11O-UI-06107-C

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/17/10
Claimant: Appellant (4)

Section 96.5(2)a – Discharge for Misconduct/Requalification
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

An appeal was filed from a representative's decision dated January 21, 2011, reference 03, which concluded that Asaad Jabir was discharged for misconduct in connection with his employment with Loffredo Fresh Produce Company, Inc. (Loffredo) A telephone hearing was scheduled for March 2, 2011. The March 3, 2011 decision of the administrative law judge affirmed the disqualification. Mr. Jabir filed a further appeal with the Employment Appeal Board, which, on May 5, 2011, remanded the matter for a new hearing. The remand was based on the conclusion that Mr. Jabir had been prevented from participating in the prior hearing through no fault of his own.

Pursuant to the remand, due notice was issued scheduling a hearing for July 6, 2011 in Des Moines, Iowa. Neither party appeared for the hearing. 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:

At issue in this matter is 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 appear 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 to determine whether the unemployment insurance decision should be affirmed.

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 the evidence in the record and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed. It is noted that Workforce Development issued a decision on April 20, 2011 (reference 07) holding that Mr. Jabir had requalified for benefits after his disqualifying separation from Loffredo. As such, benefits are allowed, provided he is otherwise eligible, but shall not be charged to Loffredo.

Pursuant to the rule, the appellant must make a written request to the administrative law judge within 15 days after the mailing date of this decision asking that the hearing be reopened. 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 unemployment insurance decision dated January 21, 2011, reference 03, is modified. The decision disqualifying the claimant from receiving benefits has been amended by subsequent agency action holding him requalified for benefits after his disqualifying separation from Loffredo. This decision will become final unless a written request establishing good cause to reopen the record is made to the administrative law judge or an appeal is filed with the Employment Appeal Board within 15 days of the date of this decision.

_____
Carolyn F. Coleman
Administrative Law Judge

_____
Decision Dated and Mailed

cfc/kjw