

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FRANCISCO J GALINDO
Claimant

APPEAL NO. 08A-UI-01163-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 01/06/08 R: 01
Claimant: Respondent (1)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct
871 IAC 26.8(5) - Decision on the Record

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc., filed a timely appeal from the January 25, 2008, reference 01, decision that allowed benefits. A hearing was scheduled for February 18, 2008 and the parties were properly notified. Claimant Francisco Galindo was available for the hearing. The employer failed to comply with the hearing notice instructions to call in a telephone number for the hearing and did not participate. Based on the employer's failure to participate, the administrative file, and the law, the administrative law judge enters the following findings of fact, reasoning, conclusions, and decision.

ISSUE:

Decision on the record.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The appellant, Tyson Fresh Meats, Inc., failed to comply with the hearing notice instructions to call in a number at which a representative could be reached at the time of the hearing. The employer's representative of record is TALX UC eXpress. TALX UC eXpress received the hearing notice and was aware of the hearing because it provided proposed exhibits in response to the hearing notice. The employer/appellant and its representative, TALX UC eXpress, have each participated in many hearings with the Appeals Section and are familiar with the hearing notice instructions requiring the employer to call in a telephone number for the hearing. The hearing notice instructions are clearly stated and emphasized through use of upper case letters, bold font, underlining, explicit warnings, and a red box surrounding the hearing notice instructions. The appellant did not 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 employer failed to comply with the simply stated, clear instructions set forth on the face of the hearing notice. Those instructions required the employer to telephone the Appeals Section and provide a telephone number for the hearing. Those instructions were highlighted and emphasized in multiple ways. Neither the employer nor its representative complied with the hearing notice instructions. The employer and its representative are repeat players vis-à-vis unemployment insurance appeal hearings with Iowa Workforce Development and, presumably, would have little excuse for failing to follow the hearing notice instructions. If the administrative law judge relaxes the hearing notice requirements for this experienced employer or this experienced employer representative agency, then the painstakingly crafted hearing notice becomes meaningless and no party could be held accountable for failing to comply with the simple, straightforward instructions contained on the notice.

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. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record. 871 IAC 26.14(7)(c).

DECISION:

The Agency representatives January 25, 2008, reference 01, decision is affirmed. The decision allowing 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs