

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELVIN WILLIAMS
Claimant

APPEAL NO. 13O-UI-06158-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 02-10-13
Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 7, 2013, reference 01, decision that allowed benefits to the claimant. After failing to participate in the hearing April 16, 2013, the claimant appealed to the Employment Appeal Board listing a temporary change in address as the reason he did not participate in the hearing. Consequently, the Employment Appeal Board remanded the case for a new hearing so the claimant could participate. After due notice was issued to the parties' last stated addresses of record, a hearing was scheduled to be held July 2, 2013. The employer responded to the hearing notice. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Because the Employment Appeal Board did not vacate the original appeal decision number 13A-UI-03208-ET, that hearing record is adopted and incorporated herein.

ISSUE:

The issue is whether the claimant voluntarily left his employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Inasmuch as the decision was not vacated as a result of the Employment Appeal Board remand, the April 16, 2013, administrative law judge's findings of fact in appeal number 13A-UI-03208-ET is hereby adopted and incorporated herein as the findings of fact for appeal number 13O-UI-06158-ET.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

For the reasons that follow, the administrative law judge concludes that inasmuch as the decision was not vacated as a result of the Employment Appeal Board remand, the April 16, 2013, administrative law judge's reasoning and conclusions of law in appeal number 13-UI-03208-ET is hereby adopted and incorporated herein as the reasoning and conclusions of law for appeal number 13O-UI-06158-ET.

DECISION:

Inasmuch as the decision was not vacated as a result of the Employment Appeal Board remand, the April 17, 2013, administrative law judge's decision in appeal number 13A-UI-03208-ET is hereby adopted and incorporated herein as the decision for appeal number 13O-UI-06158-ET. Benefits are denied, until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs