

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARROW, KEVIN, D
Claimant

APPEAL NO. 13A-UI-02687-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 01/20/13
Claimant: Respondent (1)

Section 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 25, 2013, reference 01, decision that allowed benefits. A hearing was set for April 2, 2013 and the parties were duly notified by notice mailed on March 13, 2013. Claimant Kevin Barrow did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. The employer provided a telephone number for the hearing, but the employer representative was not available at that number at the time of the hearing. Based on the employer/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:

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., responded to the hearing notice instructions on March 29, 2013 and provided a telephone number at which a representative could be reached for the hearing: Dzemal Grcic at 319-236-9720. However, at the scheduled time of the hearing, the employer representative was not available at the telephone number employer have provided for the hearing. The employer/appellant did not request a postponement of the hearing as required by the hearing notice. The administrative law judge made three attempts to reach employer representative for the hearing. At 10:02, 10:04, and 10:15 a.m., the administrative law judge called the number employer had provided for the hearing. On each attempt to reach the employer, the telephone rang several times but no one answered. There was no answering machine available, so the administrative law judge could not leave a message for the employer representative. As of the entry of this decision at 10:40 a.m., the administrative law judge has still not heard from the employer.

The administrative law judge has conducted a careful review of the administrative file to determine whether the unemployment insurance decision should be affirmed. The administrative file content available to the administrative law judge is limited to the February 25, 2013, reference 01, decision that allowed benefits based on agency conclusion that the claimant was discharged for no disqualifying reason.

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 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.

DECISION:

The agency representative's February 25, 2013, reference 01, decision is affirmed. The decision that allowed benefits provided the claimant was otherwise eligible and that held the employer's account could be charged 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/css