

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIO ALCOTA
Claimant

APPEAL NO: 08A-UI-09865-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 09/21/08 R: 01
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge
Section 96.6-2 – Timeliness of Appeal
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

Julio Alcota (claimant) appealed a representative's October 10, 2008 decision (reference 01) that disqualified him from receiving unemployment insurance benefits, and held the account of Tyson Fresh Meats, Inc. (employer) was not subject to charge because the claimant had been discharged for disqualifying reasons.. A telephone hearing was held on November 12, 2008. The claimant did not participate in the hearing. The employer responded to the hearing notice, but was not available for the hearing. The employer did not contact the Appeals Section in response to the message left. Ike Rocha was available to translate the hearing. Based on the administrative file and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The claimant failed to provide a telephone number at which he could be reached for the hearing. The claimant 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 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 and Iowa Code section 17A.12-3, the claimant 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 claimant from participating in the hearing at its scheduled time.

Since the Storm Lake Workforce Office verified the initial appeal had been faxed to the Appeals Section on October 15, the claimant's appeal is timely.

DECISION:

The representative's October 10, 2008 decision (reference 01) is affirmed. The claimant filed a timely appeal. The October 10 decision disqualifying the claimant from receiving benefits as of September 21, 2008, 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.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs