

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PEG E CHITWOOD**  
Claimant

**APPEAL NO. 11A-UI-05213-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 02/27/11**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

An appeal was filed from a representative's decision dated April 11, 2011, reference 01, which concluded that Peg Chitwood was discharged by Hy-Vee, Inc. for no disqualifying reason. A telephone hearing was scheduled for May 16, 2011. The claimant responded to the notice of hearing but was not available at the number provided at the scheduled time of the hearing. The employer, the appellant herein, did not respond to the notice of hearing. Based on the appellant's failure to participate in the hearing 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 provide a telephone number at which it could be reached for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

**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 concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed. Documents and statements submitted for the fact-finding interview were not available to the administrative law judge at the time of the hearing. The employer alleged in its letter of appeal that the claimant had been discharged for repeated tardiness. The employer had the burden of proving disqualifying misconduct but has not offered any evidence in support of its position. Given the lack of evidence, it must be concluded that the employer failed to satisfy its burden of proof. Therefore, the prior decision shall stand.

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 April 11, 2011, reference 01, is affirmed. The decision holding the claimant qualified for 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 or an appeal is filed with the Employment Appeal Board within 15 days of the date of this decision.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs