

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY J YOUNG
Claimant

APPEAL NO. 07A-UI-02129-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 01/28/07 R: 03
Claimant: Appellant (1)

871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

An appeal was filed from a representative's decision dated February 21, 2007, reference 01, which concluded Anthony Young was not eligible to receive job insurance benefits. A telephone hearing was scheduled for March 19, 2007. The claimant, the appellant herein, responded to the notice of hearing but was not available at the number provided at the scheduled time of the hearing. Neither Mr. Young nor his witness was available at the number provided to the Appeals Bureau. The individual answering the phone at that number provided the administrative law judge with Mr. Young's cell phone number and a voice message was left for him on the cell phone. He did not contact the administrative law judge until the afternoon of March 20. Mr. Young had gone out of town due to the death of his uncle. The funeral was on Saturday, March 17. He had not requested a postponement of the hearing. Inasmuch as the funeral was on March 17, the administrative law judge concluded that he did not have good cause for not participating in the hearing on March 19. Moreover, he had ample opportunity to request a postponement since the death occurred on March 15. The administrative law judge concluded that Mr. Young did not establish good cause for not participating in the hearing and declined to reopen the hearing record.

Based on the 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:

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 be available at the telephone number provided and 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 the evidence in the record and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed. Mr. Young did not avail himself of the opportunity to provide evidence to establish that he did not abandon his job as contended by the employer.

DECISION:

The unemployment insurance decision dated February 21, 2007, reference 01, is affirmed. The decision disqualifying the claimant from receiving benefits remains in effect. This decision will become final unless a written appeal is filed with the Employment Appeal Board within 15 days of the date of this decision.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw