

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WILLIE J JACKSON**  
Claimant

**APPEAL NO. 08A-UI-04222-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 04/06/08 R: 01**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

An appeal was filed from a representative's decision dated April 29, 2008, reference 02, which concluded that Willie Jackson was discharged by Tyson Fresh Meats, Inc. (Tyson) for misconduct. A telephone hearing was scheduled for 2:00 p.m. on April 14, 2008. Both parties responded to the notice of hearing but neither party was available at the numbers provided at the scheduled time of the hearing. A message was left for Mr. Jackson at 2:01 p.m. but he did not call back until 2:18 p.m. He had gone to the store prior to the hearing time and did not arrive back until approximately 2:18 p.m. Because he did not establish good cause for not being available at the scheduled time, the administrative law judge 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 parties failed to be available at the telephone numbers provided for the hearing 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 not correct and should not be affirmed. Mr. Jackson was discharged by Tyson and, as such, the employer had the burden of proving that he should be disqualified from receiving benefits. The only information provided by the employer to date is that he was discharged for "unacceptable and improper conduct." It was incumbent upon the employer to provide specific details of the reason for discharge as mere allegations of misconduct are not sufficient to result in disqualification from benefits. 871 IAC 24.32(4).

Because the employer herein has not provided details of the reason for Mr. Jackson's separation, it is concluded that disqualifying misconduct has not been established. Accordingly, benefits are allowed.

Pursuant to agency rule, a party 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 party from participating in the hearing at its scheduled time.

**DECISION:**

The unemployment insurance decision dated April 29, 2008, reference 02, is reversed as disqualifying misconduct has not been established. Benefits are allowed, provided Mr. Jackson satisfies all other conditions of eligibility. 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