

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHAD J JENSEN**  
Claimant

**APPEAL NO. 09A-UI-16639-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS**  
Employer

**Original Claim: 08/09/09  
Claimant: Respondent (1)**

Section 96.5-2 – Suspension  
871 IAC 24.18 – Wages  
Section 96.3-7 – Recovery of Overpayment  
871 IAC 26.8(5) – Decision on the Record

**STATEMENT OF THE CASE:**

The employer appealed October 27, 2009 decision (reference 02) that held the claimant qualified to receive benefits because he had been suspended for non-disqualifying reasons. The employer also raised the issues of whether the claimant had been overpaid because the employer paid him for the weeks he was suspended. A telephone hearing was scheduled on January 13, 2009. The claimant did not respond to the hearing notice. The employer responded, but was not available for the scheduled hearing. A message was left on the employer's phone to contact the Appeals Section or a decision would be made based on the information contained in the administrative record. The employer did not again contact the Appeals Section. 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 employer responded to the hearing notice, but was not available for the hearing. The employer did not contact the Appeals Section even after the employer's witness was called and asked to again contact the Appeals Section if the employer wanted to provide testimony.

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 without any testimony, the unemployment insurance decision previously entered in this case is correct and should be affirmed.

Pursuant to the rule and Iowa Code § 17A.12-3, the employer 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 employer from participating in the hearing at its scheduled time.

**DECISION:**

The representative's October 27, 2009 decision (reference 02) is affirmed. The decision holding the claimant qualified to receive benefits as of August 9, 2009, remains in effect. The administrative record does not establish the claimant received wages for the weeks he was on suspension. 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.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw