

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHADE G RIAK**  
Claimant

**APPEAL NO. 09A-UI-19519-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT & COMPANY**  
Employer

**OC: 11/15/09**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Chade Riak appealed from an unemployment insurance decision dated December 16, 2009, reference 02, that denied benefits. A telephone hearing was scheduled for February 9, 2010. Mr. Riak's notice was returned to the Appeals Section as undeliverable and Mr. Riak did not participate. The employer was available through Tony Luse, Employment Manager. 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:**

Decision on the record.

**FINDINGS OF FACT:**

On January 11, 2010, the Appeals Section mailed notice of the hearing to the parties' last-known addresses of record. The hearing was set for February 9, 2010. Claimant Chade Riak's notice was mailed to Apartment 5, 309 E. South, Street, Marshalltown, Iowa 50158-3374. On January 15, 2010, the United States Postal Service returned Mr. Riak's notice with notation that there was no such street number and that the Postal Service was unable to forward the document. The administrative law judge checked the Marshall County Assessor's website and confirmed that 309 E. South Street does not exist in Marshalltown, Iowa. The administrative law judge checked Workforce Development records for another address of record. Those Agency's administrative records indicate that Mr. Riak provided the following address at that time he established his claim for benefits in November 2009: Apartment 5, 307 E. South, Street, Marshalltown, Iowa 50158-3374. The Agency administrative records indicate that the Agency updated the address of record to 309 E. South Street on December 7, 2009. The administrative law judge checked the Marshall County Assessor's website for the 307 E. South Street address. That number does exist, but is a single family residence, not a multiple unit building.

Because there is an issue regarding the timeliness of the claimant's appeal and the claimant is unavailable, 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. The claimant's appeal is on its face late. Without evidence from the claimant to establish good cause to treat the late appeal as a timely appeal, the administrative law judge would have no legal authority to disturb the December 16, 2009, reference 02, that denied benefits.

Pursuant to the administrative code rule, the appellant 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 appellant from participating in the hearing at its scheduled time.

A copy of this decision will be mailed to both addresses of record for the claimant referenced above.

**DECISION:**

The Agency representative's December 16, 2009, reference 02, decision is affirmed. The decision denying 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 within 15 days of the date of this decision.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs