

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSE D ACEVEDO**  
Claimant

**APPEAL NO. 09A-UI-14745-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS NIC**  
Employer

**OC: 09/06/09**  
**Claimant: Appellant (1)**

Iowa Code Section 96.5(1) – Voluntary Quit  
871 IAC 26.8(5) – Decision on the Record

**STATEMENT OF THE CASE:**

Jose Acevedo appealed from an unemployment insurance decision dated September 28, 2009, reference 01, that denied benefits. A telephone hearing was scheduled for October 29, 2009. Mr. Acevedo provided a telephone number for the hearing, but was not available at that number at the scheduled time of the hearing. The employer was available for the hearing through Human Resources Representative Will Sager. Spanish-English interpreter Ike Rocha was available to assist with the hearing. 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:**

The parties were properly notified of the scheduled hearing on this appeal. On October 28, 2009, the appellant, Jose Acevedo, responded to the hearing notice instructions and provided a telephone number at which he could be reached for the hearing: 712-730-0962. However, at the scheduled time of the hearing, Mr. Acevedo was not available at the telephone number he provided. The administrative law judge called the number Mr. Acevedo had provided and left an appropriate message in English and Spanish. The message included the toll-free number for the Appeals Section. The hearing record closed at 10:23 a.m. As of the entry of this decision at 10:35 a.m., there has been no contact from Mr. Acevedo. Mr. Acevedo did not request a postponement of the hearing as required by the hearing notice.

Mr. Acevedo's appeal was submitted by attorney Steve Hamilton. On October 28, 2009, the administrative law judge noted that the claimant had provided a telephone number for the hearing, but Mr. Hamilton had not. The administrative law judge telephoned Mr. Hamilton to clarify whether he would or would not be representing Mr. Acevedo at the appeal hearing. Mr. Hamilton advised the administrative law judge he would not be representing Mr. Acevedo at the hearing. Mr. Hamilton added that he had spoken with Mr. Acevedo the morning of

October 28 and had made this clear to Mr. Acevedo. Thus, Mr. Acevedo was well aware of the hearing set for October 29, 2009 at 10:00 a.m. and his obligation to appear for the hearing.

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.

Pursuant to the 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.

**DECISION:**

The Agency representative's September 28, 2009, reference 01, decision is affirmed. The decision disqualifying the claimant from receiving 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