

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY YAH
Claimant

APPEAL NO: 12A-UI-09835-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

A H MANAGEMENT LP
Employer

OC: 07/22/12
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's August 9, 2012 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated during part of the hearing. Carol Weidinger, a TALX representative, appeared on the employer's behalf. Kristen Amfahr, the general manager, and Carla Rivers, the operations manager and the claimant's supervisor, testified on the employer's behalf.

At the beginning of the hearing, the claimant asked the administrative law judge to call her back, if her cell phone dropped the call. When it was the claimant's turn to testify, her cell phone dropped the call. The administrative law judge called the claimant again. Even though it sounded as if someone had picked up the call and was walking, no one said anything. When the administrative law judge could not contact the claimant, the hearing was closed.

At 10:40 a.m. or two hours later, the claimant called the Appeals Section and asked that the hearing be reopened. Based on the claimant's request to reopen the hearing, the evidence, the arguments of the parties, and the law, the administrative law judge denies the claimant to reopen the hearing and concludes she is not qualified to receive benefits.

ISSUES:

Is there good cause to reopen the hearing?

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits or did the employer discharge her for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in February 2011. She worked as a full-time housekeeper. On June 29, 2012, the claimant called and told Amfahr she was unable to work because an immediate family member had just passed away. When the claimant did not report to work as scheduled on June 30, Amfahr called the claimant to find out why she was not at work. Amfahr understood the claimant was still not at work because of the family member's

death. The claimant had not called on June 30 because she assumed the employer would know she would not be at work on June 30, 2012.

The claimant does not Mondays or Tuesdays. The employer's bereavement policy gives an employee three days off from work. The claimant did not work as scheduled on July 4 or 5. When the claimant did not return to work, the employer no longer considered her an employee. The employer's policy informs employees that they are considered them to have voluntarily quit if they do not call or report to work for two consecutive days.

The claimant called and talked to Rivers on July 18. She told Rivers she was ready to return to work. Rivers then told the claimant that she no longer worked for the employer.

On September 5, the claimant learned she had a job interview at 8:00 a.m. on September 6. The claimant incorrectly assumed she would be done with the interview by 8:30 a.m., the time her appeal hearing was scheduled. When the claimant was called for the hearing, she asked the administrative law judge to call her back if her cell phone dropped the call. The claimant heard the employer testify, but her cell phone dropped the call when it was her turn to testify.

The claimant was called back. The claimant's cell phone stopped ringing as if someone had picked it up, but no one responded or said anything. It seemed as if someone were walking with a cell phone in a pocket. When the claimant could not be contacted, the hearing was closed.

Two hours later, the claimant called and explained her cell phone lost network coverage. When this happened her cell phone dropped the call. When her interview ended at 9:30 a.m., she contacted someone to get the phone number to call the Appeals Section because she left her hearing notice at her home. It took until 10:40 a.m. before someone could let the claimant know what number to call the Appeals Section. The claimant requested that the hearing be reopened.

REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c).

The instruction on the back of the hearing notice informs parties that if possible they are to avoid using a cell phone to prevent transmission and battery problems. If necessary, a party can use a phone at the local Workforce Center. When the claimant was initially called, she did not indicate she was at a group interview. While the claimant was not asked questions by interviewers during the hearing, it was obvious from the background conversation there were a number of people present at the interview or orientation. The claimant did not contact the Appeals Section for a continuance because she assumed she would be done with the interview before 8:30 a.m.

Even though the claimant intended to participate, she failed to take reasonable steps to make sure she was available to participate in the hearing she requested. When the hearing began the claimant thought her cell phone might drop the call, which it did. If parties use cell phones it is their responsibility to make sure they are able to participate for all of the hearing, not just part of it. The claimant's poor judgment made it impossible for her to participate in the hearing in a

meaningful way. Poor judgment does not amount to good cause. Therefore, the claimant's request to reopen the hearing is denied.

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(1), (2)a. Since the claimant contacted the employer on July 18, the evidence does not establish that she intended quit. Instead, the evidence establishes that the employer discharged the claimant. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The evidence establishes the claimant did not report to work from June 29 through July 18. On June 29 and 30 the employer understood the claimant was not at work because a family member had just passed away. The claimant did not ask for time off and the employer's policy allows three days for bereavement. The claimant was off work more than three days. The evidence does not establish why the claimant did not call or contact the employer from July 1 to 18. Since the claimant did not properly report she would absent July 1 through 18, and the evidence does not establish why she did not work these days, the employer discharged the claimant for excessive unexcused absenteeism. The claimant committed work-connected misconduct. As of July 22, the claimant is not qualified to receive benefits.

DECISION:

The claimant's request to reopen the hearing is denied. The representative's August 9, 2012 determination (reference 01) is affirmed. The employer discharged the claimant for excessive unexcused absenteeism which amounts to work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of July 22, 2012. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css