

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KIMBERLY A WELLS**

Claimant

**APPEAL NO: 14A-UI-03995-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEARTLAND EMPLOYMENT SERVICES**

Employer

**OC: 04/04/14**

**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge  
871 IAC 26.14(7)b and c – Request to Reopen

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's April 4, 2014 determination (reference 02) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. A telephone hearing was scheduled on May 6 at 10:30 a.m. On April 30, 2014, the employer's representative informed the Appeals Bureau that the employer would not be participating at the hearing. The claimant was not called for the hearing because she had not contacted the Appeals Bureau prior to the scheduled hearing to provide the phone number she would be at for the hearing. The claimant contacted the Appeals Bureau at 2:45 p.m. on May 6 to participate at the hearing. The claimant made a request to reopen the hearing. Based on the claimant's request to reopen the hearing, the administrative record, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUES:**

Did the claimant establish good cause to reopen the hearing?

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in April 2013. She worked as a full-time registered nurse.

On February 18, 2014, the claimant was assigned to an area she was not supposed to be working in. When the claimant went to that area, a nursing supervisor made a comment that someone looked mad. The claimant told a nursing supervisor, an employee who knew the claimant's humor, that if she were mad she would be packing and then she, the nursing supervisor, should duck. This supervisor made a comment that she would walk down with "her little postal clerk." When the night supervisor kept making comments like this, the claimant finally told her to let it go and stop making anymore comments. Nothing more was said in jest by either employee.

On February 18, 2014, the employer suspended the claimant. On March 3, 2014, the employer discharged the claimant for violating the employer's zero tolerance and violence in the workplace policy.

The claimant received the hearing notice before the May 6 scheduled hearing. She misplaced it because she was moving. The claimant knew she had a hearing coming up and contacted the Appeals Bureau on May 6 around 2:45 p.m. to participate at the 10:30 a.m. hearing. She 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).

Since the claimant received the hearing notice before the scheduled May 6 hearing, her failure to immediately call the Appeals Bureau and provide the phone number she could be contacted at for the hearing before she misplaced the hearing notice, does not establish good cause to reopen the hearing. The claimant's request to reopen the hearing is denied.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer may have had justifiable business reasons for discharging the claimant, but the administrative record does not establish that the claimant committed work-connected misconduct. She used poor judgment when she made comments in jest that others may have overheard, but the claimant did not threaten another employee or intentionally violate the

employer's violence in the workplace policy. As of March 2, 2014, the claimant is qualified to receive benefits.

**DECISION:**

The claimant's request to reopen the hearing is denied. The representative's April 4, 2014 determination (reference 02) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of March 2, 2014, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css