

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONALD A PUTZSTUCK
Claimant

APPEAL NO. 13A-UI-10700-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA MOLD TOOLING CO INC
Employer

**OC: 11/18/12
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism/Tardiness
871 IAC 26.14(7) – Request to Reopen

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated September 16, 2013, reference 01, that held he was discharged for violation of a known company rule on August 14, 2013, and benefits are denied. A hearing was held on October 14, 2013. The claimant and employer did not participate.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge having considered the evidence in the record finds that: The claimant was hired on June 24, 1985 and last worked as a full-time part handler on August 7, 2013. The claimant received the employer attendance policy.

Claimant had an employer approved vacation for the period from August 8 thru August 13 with an August 14 return to work date. He failed to report or call in on August 14. When he came in August 15 the employer terminated him for attendance as he had accumulated nine points.

The claimant and employer failed to respond to the hearing notice. The department record (APLT) showed no pre-hearing call in for the hearing from either party. Claimant called at 1:40 p.m. as he failed to read and follow the hearing notice instruction.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

- a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.
- b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.
- c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

At issue is a request to reopen the record made after the hearing had concluded. The request to reopen the record is denied because the party making the request failed to participate by reading and following the instructions on the hearing notice.

The claimant made a late call to UI Appeals after the record had closed. He failed to read and follow the hearing notice instruction that is not a good cause to reopen the record.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
 - a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The administrative law judge concludes employer established misconduct in the discharge of the claimant on August 15, 2013, for excessive "unexcused" absenteeism.

Claimant reached nine attendance points when he was absent without notice on August 14.

DECISION:

The decision of the representative dated September 16, 2013, reference 01, is affirmed. The claimant was discharged for misconduct in connection with employment on August 15, 2013. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs