

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADRIAN L NEAL

Claimant

APPEAL NO: 13A-UI-01182-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WHIRLPOOL CORPORATION

Employer

OC: 01/06/13

Claimant: Appellant (1)

Section 96.5-2-a – Discharge
§ 17A.12-3 – Non-appearance of Party
871 IAC 25.8(5) – Decision on the Record
871 IAC 26.14(7) – Late Call

STATEMENT OF THE CASE:

Adrian L. Neal (claimant) appealed a representative's January 30, 2013 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Whirlpool Corporation (employer). Hearing notices were mailed to the parties' last known addresses of record for a telephone hearing to be held at 11:30 a.m. on March 4, 2013. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. The employer responded to the hearing notice and indicated that Robert Devaux would participate as the employer's representative. When the administrative law judge contacted the employer for the hearing, Mr. Devaux agreed that the administrative law judge should make a determination based upon a review of the available information. The administrative law judge considered the record closed at 11:40 a.m. At 11:48 a.m., the claimant called the Appeals Section and requested that the record be reopened. Based on a review of the available information and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Should the hearing record be reopened? Was the claimant discharged for work-connected misconduct?

OUTCOME:

Affirmed. Benefits denied.

FINDINGS OF FACT:

The claimant received the hearing notice prior to the March 4, 2013 hearing. The instructions inform the parties that if the party does not contact the Appeals Section and provide the phone number at which the party can be contacted for the hearing, the party will not be called for the

hearing. The first time the claimant directly contacted the Appeals Section was on March 4, 2013, 18 minutes after the scheduled start time for the hearing. The claimant had not read all the information on the hearing notice, and had assumed that the Appeals Section would initiate the telephone contact even without a response to the hearing notice.

The claimant started working for the employer on July 9, 2012. He worked full time as an assembly worker. His last day of work was October 12, 2012. The employer discharged him on that date. The stated reason for the discharge was falsification of his application.

On May 14, 2012 the claimant completed an application for employment with the employer. One of the questions was, "Have you been convicted of a crime other than a minor traffic violation (Felony, Misdemeanor, etc.) in the last seven years?" The claimant checked the box, "No." On October 11, 2012 there was an incident in which the claimant appeared to have lied to the employer about having a doctor's note in his car that he said he would go and get, and then did not return to work that day. The employer's human resources department found this conduct suspicious and prompted the department to review his application for potential falsification. While the employer had previously had the claimant submit to a preemployment drug test, it had not previously run a criminal background check on the claimant, so it did so on October 11. It found that the claimant had at least ten misdemeanor convictions within the past seven years, primarily for alcohol related offenses and driving without a license, but also with two for disorderly conduct and violent behavior. When the claimant was confronted with this information on October 12 he denied that the record was accurate. However, when the employer gave the claimant an opportunity to provide information to show that the record was incorrect, the claimant declined the opportunity. As a result, the employer discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant's request to reopen the hearing should be granted or denied. The Iowa Administrative Procedures Act § 17A.12-3 provides in pertinent part:

If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and make a decision in the absence of the party. ... If a decision is rendered against a party who failed to appear for the hearing and the presiding officer is timely requested by that party to vacate the decision for good cause, the time for initiating a further appeal is stayed pending a determination by the presiding officer to grant or deny the request. If adequate reasons are provided showing good cause for the party's failure to appear, the presiding officer shall vacate the decision and, after proper service of notice, conduct another evidentiary hearing. If adequate reasons are not provided showing good cause for the party's failure to appear, the presiding officer shall deny the motion to vacate.

After a hearing record has been closed the administrative law judge may not take evidence from a non-participating party but can only reopen the record and issue a new notice of hearing if the non-participating party has demonstrated good cause for the party's failure to participate. 871 IAC 26.14(7)b. The record shall not be reopened if the administrative law judge does not find good cause for the party's late contact. *Id.* Failing to read or follow the instructions on the notice of hearing are not good cause for reopening the record. 871 IAC 26.14(7)c.

The first time the claimant called the Appeals Section for the March 4, 2013 hearing was after the hearing had been closed. Although the claimant intended to participate in the hearing, the claimant failed to read or follow the hearing notice instructions and did not contact the Appeals Section prior to the hearing. 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. The claimant did not establish good cause to reopen the hearing. Therefore, the claimant's request to reopen the hearing is denied.

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's failure to disclose his criminal convictions on his application and his continued denial during the inquiry shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's January 30, 2013 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of October 12, 2012. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css