

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW M BOLEYN
Claimant

APPEAL NO: 09A-UI-18840-DW

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY MEDICAL CENTER
Employer

OC: 11/01/09
Claimant: Appellant (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's December 7, 2009 decision (reference 01) that held him disqualified from receiving benefits and the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. An in-person hearing was held at the claimant's request in Cedar Rapids on April 21, 2010. The claimant did not appear at the scheduled time for the hearing. Nicole Jaegar and Pamela Oldham appeared on the employer's behalf.

After the hearing had been closed and the employer had been excused, the claimant appeared at the hearing. He requested 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 enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is there good cause to reopen the hearing?

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

FINDINGS OF FACT:

The claimant started working for the employer in December 2008. He worked full time. Prior to his employment separation, he worked as a cook. Oldham supervised him. When the claimant started working, he received a copy of the employer's policy which informed employees about the employer's zero tolerance for making inappropriate sexual comments at work.

During his employment, the claimant received a written warning on April 30, 2009, for singing a song at work that was inappropriate. The claimant inserted the word penis for pina in the song he sang. The written warning informed the claimant that further problems of a similar nature would result in further discipline, up to and including termination.

From April 30 to October 28, 2009, the employer received reports from employees about the claimant's inappropriate behavior at work. The comments ranged from inappropriate sexual

comments to comments about buying and selling drugs. On October 27, the employer received a complaint again about the claimant making inappropriate sexual comments at work. On October 28, security personnel reported comments the claimant allegedly made about buying and selling drugs. As a result of the recent complaints about the claimant's inappropriate comments, the employer discharged the claimant on October 28, 2009.

The claimant arrived at the hearing about 10:30 a.m. or after the hearing had been closed and the employer's witnesses had been excused and were gone. The claimant misread the hearing notice and thought the hearing was by phone instead of in-person. The claimant had also recently been called back to work. As a result of being called back to work and not reading the hearing notice by the time the claimant arrived, the employer's witnesses were no longer present.

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 claimant did not appear for the hearing on time because he did not read or thoroughly read the hearing instructions. The hearing notice informs parties about the date, time and address of the hearing. The notice also states, "When you appear for the hearing, at the specified time and place, you should Ask Immediately where to go for the hearing. Do Not Wait in Line." The rule specifically states the failure to read or follow the hearing notice instructions does not constitute 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 discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The fact security personnel reported the claimant made comments about buying or selling drugs does not establish that the claimant committed work-connected misconduct. Making such comments may not be appropriate, but does not rise to the level of work-connected misconduct. The claimant knew or should have known after he received the April written warning; the employer could discipline or even discharge him if he again made inappropriate sexual comments at work. The fact an employee reported on October 27 that the claimant again made an inappropriate sexual comment does, however, rise to the level of work connected misconduct. A preponderance of the evidence presented during the hearing establishes the employer discharged the claimant for work-connected misconduct when he made an inappropriate sexual comment on October 27, 2009. Therefore, the claimant is not qualified to receive benefits as of November 1, 2009.

DECISION:

The claimant's request to reopen the hearing denied. The representative's December 7, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for a reason constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of November 1, 2009. This disqualification continues until he 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.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css