

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENNIS M NELSON
Claimant

APPEAL NO: 13A-UI-10395-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION
Employer

OC: 05/02/10
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant appealed a department decision dated September 3, 2013, reference 02, that held he voluntarily without good cause on July 23, 2013, and benefits are denied. A telephone hearing was held on October 7, 2013. The claimant participated. Eka Otu, Representative, Patty Maltese, Supervisor, and Michelle Martin, HR/Labor Relations Manager, participated for the employer.

ISSUES:

Whether claimant was discharged for misconduct in connection with employment.

Whether claimant's request to reopen the record should be granted.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on June 7, 2010, and last worked for the employer as a full-time CSAA (customer service associate) at a Sioux City, Iowa location on July 2, 2013. Claimant had been granted short term disability for a one-year period from June 13, 2012 to June 18, 2013 due to illness. He returned to work that ended with one-hour of service on July 2.

Claimant began using PTO/vacation time to cover continuing absences from work until it was exhausted and then he called in absences due to illness. He refused an employer opportunity to go on long term disability, and a 30-day non-paid leave of absence. The employer does not allow an indefinite leave.

Claimant was a no-call/no-show to work for July 15/16. The employer sent claimant a July 18 return to work letter that set a deadline for July 23. Claimant responded with text messages on July 19 that he was ill and on July 23 he was unable to return to work due to illness. He

provided no medical documentation to the employer to excuse his continuing absenteeism and continuing employment was made available to him. He was terminated on July 23 when he failed to report to work.

Claimant participated in the hearing to the point of hearing witness Martin testified. When it was apparent he disconnected, he was immediately called by the judge and voice mail message was the response. The record closed at 8:30 and claimant did not call in.

Claimant called at 8:45 a.m. and acknowledged his phone had died. He did not have the hearing notice so he called Sioux City to get the UI Appeals number, and called in about what happened.

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 administrative law judge concludes the failure of claimant to continue to participate in the hearing was not for a good cause and his request to reopen the record is denied.

Hearing participants are expected to have a good working phone. Claimant's disconnection from the hearing was due to this failure. He was unable to be reached at the phone number when the judge re-called to connect him. He compounded the problem by not having the hearing notice with the direct line phone number to call UI Appeals to request to be re-connected by the close of 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(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 further concludes employer established claimant was discharged for misconduct on July 23, 2013 for excessive unexcused absenteeism.

The employer had granted claimant a one-year short term disability benefit to June 18, 2013. He worked only one-hour on July 2. He refused long term disability and a 30-day unpaid leave of absence knowing the employer did not grant indefinite leaves.

Claimant was a no-call/no-show to work for two connective days on July 15/16 that is not excusable. He failed to respond to the employer return to work July 18 letter with medical documentation to supporting his continuing absenteeism that he reports is based on illness. He was terminated on July 23 for failing to report to work. Job disqualifying misconduct is established.

DECISION:

The department decision dated September 3, 2013, reference 02, is affirmed. The claimant was discharged for misconduct on July 23, 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