

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI	
BRANDON T RICHARD Claimant PIZZA HUT Employer	APPEAL NO. 11A-UI-00132-DWT ADMINISTRATIVE LAW JUDGE DECISION OC: 11/28/10 Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's December 28, 2010 determination (reference 03) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The determination for reference 03 is substantively identical to the determination issued for reference 01. The only difference is the extension on the employer's account number. Reference 01 lists the account number as -011 and reference 03 lists it as -000. Since the two determinations are the same, the same decision will be issued for both determinations.

The claimant participated in the hearing. The employer responded to the hearing notice, but was not available for the scheduled hearing. The administrative law judge left a message for the witness to contact the Appeals Section immediately.

The employer returned the administrative law judge's call after the hearing had been closed and the claimant had been excused from the hearing. The employer made a request to reopen the hearing. Based on the employer's request to reopen the hearing, the evidence, the arguments of the parties, and the law, the administrative law judge concludes the employer did not establish good cause to reopen the hearing and the claimant is qualified to receive benefits.

ISSUES:

Did the employer establish good cause to reopen the hearing?

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

FINDINGS OF FACT:

The claimant started working for the employer in December 2008. The claimant worked 15 to 20 hours a week as a delivery driver. The claimant goes to school and informed the employer he was available to work 5 to 9 p.m., Monday through Friday. Even though the claimant had finals the week of December 2, he did not ask for time off. Instead, he told the employer he

could not work extra hours or after 9 p.m. right before finals because he had research papers to finish and needed time to study for final exams.

On December 1, at 9:30 p.m. the claimant was still working at the store even though he was only scheduled to work until 9 p.m. He still had to get homework done when the store manager asked if he would take out the garbage and sweep the floor. The claimant declined to do this because he needed to get home to study. Since the claimant told the employer before he could not stay late and work past 9 p.m. this week, he did not understand his job was in jeopardy if he declined to do these jobs and work later than 9:30 p.m. Instead of warning the claimant he could be discharged if he did not complete these requested tasks, on December 2 the store manager discharged him for insubordination.

After the hearing notice was mailed on January 20, 2011, the employer responded to the hearing notice and provided a phone number to contact the employer's witness. When the witness' schedule changed from working in the morning to 3 p.m., the employer forgot to provide a new phone number for the witness to be contacted at for the hearing or to request a continuance so the witness could do the hearing at work.

By the time the employer returned the call left at 9 a.m., the hearing had been closed and the claimant had been excused from the hearing. The employer made a request to reopen the hearing.

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).

After the witness' work schedule was changed so he did not work until 3 p.m., the employer forgot about the 9 a.m. scheduled hearing and did not think about providing the phone number where the witness/representative could be contacted at 9 a.m. The employer did not request that the hearing date and/or time be changed. While it is understandable how the employer forgot about the hearing after a schedule change, it was the employer's responsibility to be available for the scheduled hearing or request that the hearing date or time be changed. The employer did not establish good cause to reopen the hearing. The employer'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 § 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).

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).

Since the claimant told the employer before the week of December 2 he could not work past 9 p.m. this week, the employer's request to have him work even after 9:30 p.m. to take out garbage and sweep the floor was not reasonable. Under this factual situation, the claimant did not commit work-connected misconduct. As of November 28, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's December 28, 2010 determination (reference 03) is affirmed. Based on the facts in this case, the employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of November 28, 2010, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw