

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

TIFFANY C ROBB
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APAC CUSTOMER SERVICES OF IOWA
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166 0283

Appeal Number: 05A-UI-04255-DWT
OC: 03/20/05 R: 03
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

APAC Customer Services, Inc. (employer) appealed a representative's April 11, 2005 decision (reference 01) that concluded Tiffany C. Robb (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 12, 2005. The claimant did not participate in the hearing. The employer responded to the hearing notice but was not available for the hearing. A message was left for the employer to contact the Appeals Section if the employer wanted to participate in the hearing.

The employer contacted the Appeals Section 40 minutes after the hearing had been scheduled to start. Even though the employer received the hearing notice, the date of the hearing was noted on the employer's calendar incorrectly. The employer requested that the hearing be reopened. Based on the employer's request to reopen the hearing, the administrative record,

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 again in early January 2005. The claimant's employment ended on March 7, 2005. The employer discharged the claimant for excessive absenteeism and tardiness.

Neither party participated at the fact-finding interview. The only information about the claimant's separation appeared in the employer's letter of appeal prepared by a third party, TALX, who represents the employer in unemployment insurance matters.

The employer received the hearing notice in a timely manner. Prior to the hearing, the employer contacted the Appeals Section and provided the employer's witness name and phone number to contact the witness for the hearing. The employer's witness was not available for the hearing. A message was left for the employer to contact the Appeals Section immediately if the employer wanted to participate in the hearing.

On May 12, the employer arrived at work at 9:40 a.m. or 40 minutes after the hearing was scheduled. The employer contacted the Appeals Section and requested that the hearing be reopened. The employer acknowledged the employer made a mistake when noting the day the hearing was scheduled. The employer's witness was not at work until 9:40 a.m.

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 employer received the notice of hearing, but was not available for the hearing. While the employer inadvertently recorded the wrong hearing date, this mistake does not constitute good cause to reopen the hearing. Therefore, the employer's request to reopen the hearing is denied.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her 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).

The record reveals that neither party participated in the hearing or the fact-finding interview. Even though the employer's representative was called for the fact-finding interview, the employer's representative did not provide any information to the Claims Section. The only information the employer provided was that the claimant had been discharged for excessive absenteeism and tardiness. The employer failed to establish that the claimant committed work-connected misconduct. Therefore, as of March 20, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The employer's request to reopen the hearing is denied. The representative's April 11, 2005 decision (reference 01) is affirmed. The employer discharged the claimant, but did not establish the claimant was discharged for work-connected misconduct. As of March 20, 2005, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/sc