

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASHLEY L ZUMMAK
Claimant

APPEAL NO: 12A-UI-03978-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 02/19/12
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's April 2, 2012 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant responded to the hearing notice, but did not answer her phone when she was called for the 8:30 a.m. hearing. David Williams, a TALX representative, appeared on the employer's behalf. Christy Harris, Myra Walterdorf and David Mollenhoff were available to testify for the employer.

After the hearing had been closed and employer's witnesses excused, the claimant called the Appeals Section to participate in the hearing. The claimant made a request to reopen the hearing. Based on the claimant's request to reopen the hearing, the administrative record, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUES:

Did the claimant establish good cause to reopen the hearing?

Did the employer discharge her for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in March 2010. She worked as a full-time CNA.

During the last few weeks of her employment, the employer talked to the claimant about answering her nurse's pages during her shift, her supervisor being unable to find her at work and for failing to help residents when asked. On February 14, the employer talked the claimant about complaints the employer received about the claimant after she worked the weekend of February 11-12. The claimant admitted she ignored her nurse's pages that weekend because she did not want to deal with the nurse talking to her about not being able to find the claimant. When the claimant left the hallway for lunch, she had not told anyone she was leaving. The claimant acknowledged she had shut off a resident's call light several times because she needed help with this resident and the co-worker she asks for assistance was busy with other

residents. The claimant did not page anyone to help her with this resident's needs. The claimant did not provide the resident with assistance.

The employer discharged the claimant on February 14 for the above incidents that occurred the weekend of February 11-12 and for her "I don't care attitude."

The claimant responded to the hearing notice and provided her cell phone number to the Appeals Section. The claimant knows that she has her cell phone reception is not dependable where she lives, but made no arrangements to make sure she could be reached by phone for the hearing. The claimant was called for the hearing, but she did not answer. A message was left for the claimant to contact the Appeals Section immediately. By the time the claimant called the Appeals Section, the employer had been excused and the hearing was closed. The claimant 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).

The claimant knew her cell phone reception was not reliable where she lived. She did not take reasonable steps to make sure that when she was called for the hearing; she had good cell phone reception. As a result of the claimant's failure to take reasonable steps to make sure she had good cell phone reception and could be contacted for the hearing, she did not establish good cause to reopen the hearing. The claimant'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. 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 employer talked to the claimant about being on the hallway and being available when her co-workers or supervisor needed her and contacted her. The weekend of February 11-12, the nurse on duty could not find the claimant on the hallway and paged the claimant. The claimant intentionally ignored the nurse's pages. She did not respond to any of the pages because she did not want to deal with the nurse counseling her again about working on the hallway. The claimant committed work-connected misconduct when she failed to answer her nurse's pages that weekend. This conduct by itself establishes work-connected misconduct.

The claimant also turned off a resident's call light several times. While the claimant may have been busy and needed another employee to help her with this resident, failing to provide the resident with assistance after turning off the call light several times shows an intentional and substantial disregard of the resident and of the employer's interests. This also constitutes

work-connected misconduct. As of February 19, 2012, the claimant is not qualified to receive benefits.

DECISION:

The claimant's request to reopen the hearing is denied. The representative's April 2, 2012 determination (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of February 19, 2012. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css