

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

OMAR E BERRICHI

Claimant

APPEAL NO: 09A-UI-06949-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP

Employer

OC: 04/05/09

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Omar E. Berrichi (claimant) appealed a representative's May 1, 2009 decision (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 1, 2009. At the time of the scheduled hearing, 2:00 p.m., the claimant had not responded to the hearing by contacting the Appeals Section prior to hearing to provide the phone number at which he could be contacted to participate in the hearing. Rachel Watkins appeared on the employer's behalf. Watkins and the interpreter, Magdi Salama, agreed to wait for 15 minutes to give the claimant an opportunity to contact the Appeals Section and participate in the hearing. When the claimant had not contacted by 2:15 p.m., the hearing was closed and the interpreter and employer were excused.

After the hearing had been closed, the claimant contacted the Appeals Section to participate in the hearing. The claimant made a request to reopen the hearing. Based on the administrative record, the claimant's request to reopen the hearing, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant establish 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 on June 17, 2008. The claimant had surgery on his right hand in November 2008. A physician restricted him to light-duty work. To meet his work restrictions, the employer assigned the claimant to a different department. The claimant had been working in an area that was warm. In late January 2009, the employer transferred the claimant to work in the bacon end department. This area was colder than where the claimant had been working.

The claimant refused this job because he did not want to work in the cold. After the employer informed the claimant that his work restriction did not prohibit him from working in cold temperatures, the claimant then told the employer he had allergies to the cold. The claimant's physical form, however, indicates the claimant has no allergies. When the claimant continued to refuse to work at the job the employer assigned him, the employer started completing the termination paperwork. The claimant became upset when he realized the employer was discharging him. The employer discharged the claimant on February 1, 2009.

The claimant received the hearing notice for the June 1, 2009 hearing in mid-May. The claimant noticed the date and time of the hearing, but he did not read the information on the hearing notice. The claimant asserted he could not read or understand English. However, when he read the large bolded information, he realized he had made a mistake when he did not contact the Appeals Section to provide the phone number at which he could be contacted before the scheduled 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 AC 26.14(7)(b) and (c).

Although the claimant asserted he did not understand or read English, during his phone conversation with the administrative he read the hearing instructions out loud. He demonstrated he understood he made a mistake when he had not called the Appeals Section before June 1, 2009. The claimant did not establish good cause to reopen the hearing. Therefore, his request to reopen the hearing is denied.

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code sections 96.5-1, 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).

Although the claimant asserted he had allergies to working in the cold, the physical he took for the employer does not indicate he had any allergies. The work restriction the employer received did not indicate he was restricted from working in cold temperatures. The claimant did not establish a justifiable reason for refusing the light-duty work the employer transferred him to do. The claimant's refusal to do work the employer assigned him constitutes an intentional and substantial disregard of his duties to the employer. The claimant committed work-connected misconduct. As of April 5, 2009, the claimant is not qualified to receive benefits.

DECISION:

The claimant's request to reopen the hearing is denied. The representative's May 1, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of April 5, 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/pjs