

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD L BOONE
Claimant

APPEAL NO: 15A-UI-02610-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAPTIVE PLASTICS INC
Employer

OC: 01/18/15
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge
871 IAC 26.14(7) b, c – Reopen a Hearing

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's February 18, 2015 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had had been discharged for disqualifying reasons. The claimant participated at the March 31 hearing. The employer responded to the hearing notice, but was not available at the phone number provided. The employer did not participate at the hearing.

After the hearing was closed and the claimant had been excused, the employer's witness called the Appeals Bureau. 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 denies the employer's request to reopen the hearing and concludes 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 constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in January 2013 as a full-time machine operator. During his employment, the employer gave the claimant warnings about performance issues and his attendance. The last written warning the claimant received on November 8, 2014, was for attendance issues.

After receiving the November 8 warning, the claimant had no understanding his job was in jeopardy. The claimant wanted more training to improve his performance, but he did not receive additional training. The claimant had problems with equipment two weeks and a week before he was discharged. The employer did not say anything to him about these issues until January 16, the date the employer discharged him.

On January 16, the employer discharged the claimant for on-going performance issues. The claimant received a written explanation about recent performance issues, but the written information was inaccurate.

The employer's witness contacted the Appeals Bureau after the hearing was closed and the claimant had been excused. The employer relies on a third-party company to provide the phone number to contact the employer's witness for the hearing. The employer's third-party representative provided the phone number at a location the witness was not at on March 31.

At the location the witness was not at, she asked a supervisor to listen for her phone. If she was called for the hearing at that location, she asked the supervisor to give the administrative law judge the correct phone number. The supervisor did not answer the witness's phone and a message was left for the employer's witness to contact the Appeals Bureau immediately. When the employer's witness did not receive a call for the hearing, she then contacted the Appeals Bureau. On March 31, the employer's witness was at another office and that phone number was different than the phone number provided by the third-party representative. The employer requested that the hearing be reopened.

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). Even though the wrong phone number was provided to the Appeals Bureau that is an issue the employer and its third party representative must address and resolve. The employer was not available at the phone number provided. Since the employer's witness recognized the wrong phone number may have been provided, she failed to take reasonable steps to provide the correct phone number to contact her for the hearing. As a result of failing to provide the correct phone number, 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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The evidence indicates the claimant had performance issues. He requested training and learned a human resource representative suggested that he receive training and work on another shift instead of being discharged. Even though the employer had business reasons for discharging the claimant because the employer was not satisfied with his work performance, the evidence does not establish that the claimant intentionally disregarded the employer's interests. The claimant worked to the best of his ability. He did not commit work-connected misconduct. As of January 18, 2015, the claimant is qualified to receive benefits.

DECISION:

The employer's request to reopen the hearing is denied. The representative's February 18, 2015 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of January 18, 2015, the claimant is qualified to receive benefits. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css