

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHEN J WAGNOR
Claimant

APPEAL NO. 10A-UI-11729-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 06/20/10
Claimant: Respondent (2/R)

Section 96.5-2-a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's August 11, 2010 determination (reference 01) 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 claimant responded to the hearing notice, but was not available for the scheduled hearing. A message was left for the claimant to contact the Appeals Section immediately if he wanted to participate in the hearing. Melanie Cline, the store manager, appeared on the employer's behalf.

After Cline had been excused and the hearing had been closed, the claimant contacted the Appeals Section. The claimant requested that the hearing be reopened.

Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is not qualified to receive benefits.

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 in March 2008. The claimant worked as an assistant manager.

The claimant received a written warning and a three-day suspension on March 22, 2010. The claimant received the warning and suspension for failing to notify the employer he was unable to work as scheduled on March 20 and for failing to perform his assistant manager duties. Just prior to March 22, the claimant failed to check the gas price of competitors and phone that information to the employer. The March 22 written warning informed the claimant that he would be discharged if he was again absent without properly notifying the employer or failed to perform his duties as an assistant manager.

On June 19, the claimant failed to notify any supervisor there was \$121 shortage and he did not complete a cigarette audit. On June 19, the claimant reported to work 15 minutes late and left 30 minutes early. When Cline asked him why he had not contacted her about the money shortage as the employer's policy required him to do, he indicated he did not believe it was a big deal. The claimant also told Cline he had not done the cigarette audit because he had not felt like doing it.

On June 21, the employer discharged the claimant for continued attendance issues, failing to report the cash shortage to a supervisor and for failing to complete his assistant manager duties, and failing to complete a cigarette audit on June 19, 2010.

The claimant established a claim for benefits during the week of June 20, 2010. He has filed for and received benefits since June 20, 2010.

The claimant received the hearing notice and called in the phone number he could be contacted at for the hearing. This number was called and the claimant did not answer because he was sleeping. He works a night shift. While he set the alarm on his cell phone, he did not hear it go off or the phone ring when he was called for the hearing. The claimant called the Appeals Section around 8:30 a.m. after the beeping alarm on his cell phone finally woke him up. The claimant 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 claimant intended to participate at the October 4 scheduled hearing, he overslept and did not hear the alarm on his cell phone. The claimant's reason for not being available for the scheduled hearing amounts to a compelling personal reason, but does not establish good cause to reopen the hearing. Therefore, the claimant'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. 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 claimant knew or should have known his job was in jeopardy when he received a written warning and a three-day suspension on March 22 for continuous attendance issues and for failing to complete his assistant manager duties. On June 19, the claimant was late for work, left work early, and did not do a cigarette audit because he did not feel like doing it. Since the claimant's job was already in jeopardy, his failure to work as scheduled and complete one of his

job duties amounts to an intentional and substantial disregard of the employers' behalf. The employer discharged him for reasons constituting work-connected misconduct. As of June 20, 2010, the claimant is not qualified to receive benefits.

An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment will be remanded to the Claims Section to determine.

DECISION:

The claimant's request to reopen the hearing is denied. The representative's August 11, 2010 determination (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of June 20, 2010. 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. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw