

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**THOMAS A UTECH**  
Claimant

**APPEAL NO: 08A-UI-08425-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AVENTURE STAFFING  
& PROFESSIONAL SERVICES**  
Employer

**OC: 07/06/08 R: 01  
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Aventure Staffing & Professional Services (employer) appealed a representative's September 10, 2008 decision (reference 03) that held Thomas A. Utech (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant's employment separation was for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 7, 2008. The claimant participated in the hearing. The employer responded to the hearing notice, but was not available for the hearing.

After the hearing had been closed and the claimant had been excused, the employer contacted the Appeals Section. 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 enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Did the employer establish good cause to reopen the hearing?

Did the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits, or did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The employer is a temporary staffing firm. The employer most recently assigned the claimant to a job he was working at in early February.

On February 4, 2008, the claimant called the employer and reported he was ill and unable to work at the job assignment. The employer's representative, Ron, talked to the claimant. On February 5, the claimant again contacted the employer to report he was ill and unable to work. Ron again talked to the claimant and told him he had to report to work the next day. On February 6, the claimant notified the employer and talked to Ron. The claimant was still ill and unable to work. When the claimant was unable to work on February 6, Ron told the claimant he was discharged. The claimant was able to work on February 7, 2008.

When the claimant contacted the employer later in February, another representative, Krystal, told the claimant the employer had no jobs to assign him

On October 7, 2008, when the employer's receptionist answered the phone, she was told the administrative law judge was calling in regard to an unemployment insurance hearing. The receptionist put the call on hold and returned in a few minutes indicating the employer's witness was on another call. She asked if she could put the call on hold again. Although she was told no, the receptionist put the claimant and the administrative law judge on hold. After waiting five or minutes, the call was taken off hold and put through to the witness's voice mail. The administrative left the employer's witness a message that he needed to contact the Appeals Section immediately if he wanted to participate in the hearing. By the time the employer returned the call, the hearing had been closed and the claimant had been excused.

The employer's witness was not at work when the hearing was scheduled. He had been delayed because of a train. Although the employer's witness informed the receptionist he had been delayed by a train, the employer's receptionist failed to communicate this information to the administrative law judge.

**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). When the employer's representative put the administrative law judge on hold the second time and then transferred the call to the witness' voice mail without talking to the administrative law judge, these actions resulted in the employer's witness inability to participate by cell phone or have another employee participate at the scheduled hearing. Since the employer's witness contacted the office, the witness could also have contacted the Appeals Section while waiting for a train so the administrative law judge could have delayed the hearing. Neither the employer's witness nor the receptionist took reasonable steps in this matter. AS a result, the employer did not establish good cause to reopen the hearing.

A claimant is not qualified to receive unemployment insurance benefits if a claimant voluntarily quit employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. The facts presented during the hearing do not establish that the claimant quit. Instead, the employer discharged him because he was unable to work three consecutive days.

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 claimant contacted and spoke to one of the employer's employees on February 4, 5 and 6 to report he was ill and unable to work. On February 7, the employer discharged the claimant because he had not been able to work for three consecutive days. While the employer may have had business reasons for discharging the claimant, the claimant did not commit work-connected misconduct. The claimant properly notified the employer he was unable to work. The law specifically states that inability to work does not constitute work-connected misconduct. Based on this employment separation, the claimant is qualified to receive benefits.

**DECISION:**

The employer did not establish good cause to reopen the hearing. Therefore, the employer's request to reopen this hearing is denied. The representative's September 10, 2008 decision (reference 03) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. Based on this employment separation, the claimant is qualified to receive benefits as of July 6, 2008. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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