

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**EARL J SANFORD**

Claimant

**APPEAL NO: 14A-UI-11170-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE AMERICAN BOTTLING COMPANY**

Employer

**OC: 09/21/14**

**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge  
871 IAC 26.8(5) – Decision on the Record  
871 IAC 26.14(7) – Request to Reopen Hearing

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's October 16, 2014 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account is subject to charge because the claimant had been discharged for reasons that do not disqualify him from receiving benefits. The claimant participated at the November 17 hearing. The employer's witness was called for the hearing, but was not available for the hearing. A message was left for the employer's witness to contact the Appeals Bureau immediately.

When the employer returned the administrative law judge's call, the claimant had been excused and the hearing had been closed. The employer's witness made a request to reopen the hearing.

Based on the employer's request to reopen the hearing, the administrative record, 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 parties were properly notified of the scheduled hearing on this appeal. The employer was not available at the phone number provided to contact the employer for the hearing. The employer did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The employer's third-party representative notified the employer's witness about the hearing date and time. The third-party representative did not forward a copy of the hearing notice to the employer. The employer understood the hearing was scheduled at 1:30 p.m. on November 17, not at 11:30 a.m. The employer's witness was not available for the 11:30 a.m. hearing. The employer requested that this matter be reopened because the employer's third-party representative gave the witness the incorrect time of 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 facts establish there was a communication breakdown between the employer's witness and the employer's third-party representative. This is a business issue that must be resolved by the employer and its third-party representative. If the employer's third-party representative gave the employer's witness the wrong time of the scheduled hearing, this does not establish good cause to reopen the hearing. The employer's request to reopen the hearing is denied.

Iowa Admin. Code r. 871-26.8(3), (4) and (5) provide:

Withdrawals and postponements.

(3) If, due to emergency or other good cause, a party, having received due notice, is unable to attend a hearing or request postponement within the prescribed time, the presiding officer may, if no decision has been issued, reopen the record and, with notice to all parties, schedule another hearing. If a decision has been issued, the decision may be vacated upon the presiding officer's own motion or at the request of a party within 15 days after the mailing date of the decision and in the absence of an appeal to the employment appeal board of the department of inspections and appeals. If a decision is vacated, notice shall be given to all parties of a new hearing to be held and decided by another presiding officer. Once a decision has become final as provided by statute, the presiding officer has no jurisdiction to reopen the record or vacate the decision.

(4) A request to reopen a record or vacate a decision may be heard ex parte by the presiding officer. The granting or denial of such a request may be used as a grounds for appeal to the employment appeal board of the department of inspections and appeals upon the issuance of the presiding officer's final decision in the case.

(5) If good cause for postponement or reopening has not been shown, the presiding officer shall make a decision based upon whatever evidence is properly in the record.

The administrative law judge has carefully reviewed evidence in the record and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed.

**DECISION:**

The employer's request to reopen the hearing is denied. The representative's October 16, 2014 determination (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of September 21, 2014, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs