

Based on the claimant's request to reopen the hearing, the administrative record, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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 on April 26, 1999. The claimant worked as a full-time deputy sheriff. The claimant worked the midnight shift.

The claimant understood his job was in jeopardy prior to August 9, 2005. The employer had given him at least two previous warnings for reporting to work late or for sleeping on the job. After receiving the initial warning, the claimant requested a transfer to a different shift so he would not sleep on the job. There were no second shift positions available when the claimant asked about a transfer. On May 27, 2005, the claimant quit a part-time job so he could make sure he had adequate sleep. When the claimant received his second disciplinary warning, he was working with his physician to determine if he had a sleep disorder.

On August 7, 2005, the claimant reported to work 24 minutes late. On August 9, 2005, the employer discharged the claimant for continued attendance problems. The claimant did not provide the employer with any medical statement indicating he had a sleep disorder. The record does not establish any reason for the claimant reporting to work late on August 7. The claimant established a claim for unemployment insurance benefits during the week of August 7, 2005.

A hearing notice was mailed to the parties on September 12, 2005. The hearing notice informed the parties a telephone hearing would be held on September 27 at 10:00 a.m. The notice indicated the parties were required to contact the Appeals Section prior to the scheduled hearing to provide the phone number at which they could be contacted to participate in the hearing.

On September 27 at 10:00 a.m., the Appeals Section had no record that the claimant responded to the hearing notice. The claimant did not contact the Appeals Section until over two hours after the hearing had been scheduled. The claimant asserted he had followed the hearing instruction by calling the Appeals Section prior to the hearing. The claimant did not have a control number to verify he had called prior to September 27. The Appeals Section received the phone records and did not find any record that the claimant called the Appeals Section prior to noon on September 27, 2005.

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 record indicates the claimant failed to follow the hearing instructions by contacting the Appeals Section prior to the scheduled hearing. Even though the claimant asserted he had called in prior to the hearing, he did not have a control number and the Appeals Section's phone record does not indicate the claimant called the Appeals Section any time between September 12 and 27, 2005. If the claimant had called the Appeals Section at 10:00 a.m. for the scheduled hearing instead of noon, he would have been allowed to participate in the hearing. Again, the record indicates the claimant either failed to read the hearing notice or forgot about the hearing. The claimant did not establish good cause to reopen the hearing. Therefore his request 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 law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The claimant knew or should have known his job was in jeopardy after the employer gave him at least two warnings for attendance problems. The record does not establish a reasonable excuse for the claimant reporting to work late on August 7. The record does not even establish that the claimant informed the employer he would be late. Based on the administrative record, the employer discharged the claimant for work-connected misconduct. As of August 7, 2005, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The claimant's request to reopen the hearing is denied. The representative's August 29, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of August 7, 2005. 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.

dlw/kjf