

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAWN T STEWART
Claimant

APPEAL NO. 13A-UI-08850-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**MANAGEMENT & TRAINING
CORPORATION**
Employer

**OC: 06/30/13
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

Management & Training Corporation filed a timely appeal from a representative's decision dated July 24, 2013, reference 01, that allowed benefits. After due notice, a telephone hearing was held on September 5, 2013. The appellant did not participate in the hearing. The claimant participated personally. Participating on behalf of the claimant was Mr. Kurt Steeger, Attorney at Law. Based upon the appellant's failure to participate in the hearing, the administrative file and the record, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

At issue in this matter is whether the representative's decision should be affirmed.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The appellant failed to provide a telephone number at which the employer could be reached for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

Shawn Stewart was employed by Management & Training Corporation from March 2012 until June 25, 2013 when he was discharged from employment. Mr. Stewart was employed as a full-time residential training advisor and was paid by the hour.

Mr. Stewart was discharged on June 25, 2013 for an incident that had taken place over two weeks previously. On June 12, Mr. Stewart became ill while driving to work. The claimant called the facility where he was assigned to report his impending absence due to illness. The facility number was the only number that Mr. Stewart had with him at the time and due to illness the claimant was unable to provide further notification. Mr. Stewart had specifically requested the individual who answered the phone at the facility where he was assigned to also inform Mr. Stewart's supervisor of his inability to report for work due to illness. The claimant was

allowed to return to work and continue employment for two weeks until June 25, 2013 when he was discharged. It is the claimant's belief that the employer waited to discharge him until it was convenient to do so as students were leaving for summer break on June 25, 2013.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

871 IAC 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 the evidence in the record and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed.

The evidence establishes that the claimant was not discharged for a current act of misconduct. The claimant was discharged for an act that had taken place over two weeks previously. The claimant did not engage in misconduct on that date as he called the employer to report his impending absence due to illness using the only telephone number available to him at the time. Unemployment insurance benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated July 24, 2013, reference 01, is affirmed. The decision allowing benefits without disqualification remains in effect. The decision will become final unless an appeal is filed with the Employment Appeal Board within 15 days of the date of this decision.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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