

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDY WILLIAMS

Claimant

APPEAL NO: 12A-UI-14351-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL INCORPORATED

Employer

OC: 11/04/12

Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's November 29, 2012 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge. Neither party responded to the hearing notice or participated in the hearing.

The claimant called at 3:30 p.m. for the scheduled 10:30 a.m. hearing. He requested that the hearing be reopened.

Based on the administrative record, the claimant's request to reopen the hearing, and the law, the administrative law judge denies the claimant's request to reopen the hearing, but finds him qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in June 2008. He worked full time.

In late October or early November 2012, the claimant had been working 11:00 p.m. to 11:00 a.m. The claimant fell asleep at work and a manager saw him sleeping. The claimant acknowledged he had dozed off about three minutes when the manager found him sleeping. On November 5, 2012, the employer discharged the claimant for being unable to perform his essential job functions.

Hearing notices were mailed to the parties on December 13, 2012. A telephone hearing was scheduled on January 8, 2013, at 10:30 a.m. Neither party called in to provide the phone number to contact them for the hearing. The claimant called the Appeals Section at 3:30 p.m. on January 8. He requested that the hearing be reopened because his hearing notice said the hearing was scheduled on January 9. He was asked and he agreed to mail in the hearing notice he had received. As of the date of this decision, the claimant has not mailed in his hearing notice.

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 claimant's assertion that his hearing notice indicated the hearing was scheduled on January 9 instead of January 8 is not credible. This conclusion is supported by the fact the claimant indicated he would mail the hearing notice he received to the Appeals Section and he did not do this. The claimant did not establish good cause to reopen the hearing and 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. 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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The record establishes a manager found the claimant sleeping at work. At the fact-finding interview, the employer's representative indicated the claimant was discharged because he was unable to perform essential job functions. The employer did not establish that the claimant committed work-connected misconduct. Therefore, as of November 4, 2012, the claimant is qualified to receive benefits.

DECISION:

The claimant's request to reopen the hearing is denied. The representative's November 29, 2012 determination (reference 01) is reversed. The employer did not establish that the claimant committed work-connected misconduct. As of November 4, 2012, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css