

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NANCY L CERTAIN**  
Claimant

**APPEAL NO: 12A-UI-04700-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CURLYS FOODS**  
Employer

**OC: 05/08/11**  
**Claimant: Respondent (2/R)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's April 16, 2012, determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant responded to the hearing notice, but did not answer her phone. A message was left for the claimant to contact the Appeals Section immediately. Kathy Peterson, the human resource manager, appeared on the employer's behalf.

An hour after the hearing had been scheduled to start; the claimant contacted the Appeals Section to participate in the hearing. She requested that the hearing be reopened. Based on the claimant's request to reopen the hearing, the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

**ISSUES:**

Did the claimant establish good cause to reopen the hearing?

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

**FINDINGS OF FACT:**

The claimant started working for the employer in July 2006. The claimant worked full-time as a general laborer. When the claimant started working, the employer gave her information about the employer's attendance policy. The policy informs employees that if they accumulate 12 unexcused absence points in a rolling 12-month time frame, they will be discharged.

The claimant received a warning on October 3, 2011, that she had accumulated ten attendance points. On February 21, 2012, the employer gave the claimant a warning that she had accumulated 13.5 attendance points. Since the employer's attendance tracking system had not timely notified the employer about the claimant's points, the employer gave the claimant a second chance. The employer told the claimant that if she had any unexcused absences before April 29, 2012, she would be discharged.

The claimant worked as scheduled on March 16. On March 19, the claimant notified the employer she would be late for work. The claimant's shift started at 6:30 a.m. When the claimant called the employer, she indicated she had situation with her granddaughter and had to take her to the hospital.

The claimant reported to work four hours late. The claimant told the employer her daughter did not have a car, so she had to drive her granddaughter to the emergency room. The claimant then decided to stay because she did not trust her daughter and the claimant wanted to stay with her granddaughter when she was at the hospital. The claimant reported to work after she took her daughter and granddaughter back home.

The employer discharged the claimant on March 22 because she violated the employer's attendance policy by having another unexcused absence on March 19.

The claimant properly notified the Appeals Section and provided the phone number she could be contacted at to participate in the hearing. When the claimant was called, she did not hear the phone ring. Even though she received information about calling the Appeals Section if an administrative law judge had not called her by a certain time, the claimant did not do this. The claimant acknowledged she forgot the hearing was scheduled at 11:30 a.m. After the claimant noticed she had a message on her phone, she called the Appeals Section an hour late. By the time the claimant called the Appeals Section, the employer's witness had been excused and the record had been closed. The claimant requested that the hearing be reopened.

#### **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). Forgetting about the time of a scheduled hearing does not establish good cause to reopen the hearing. The claimant's request to reopen the hearing is denied.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)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 that if she had one more unscheduled absence after the February 21, 2012 warning, she would be discharged for violating the employer's attendance policy. On March 19, the claimant told the employer she chose to stay with her granddaughter at the hospital because she did not trust that her daughter could handle the situation. Since the claimant was not available for the scheduled hearing, the facts do not establish what the situation was with her granddaughter and why she had to stay at the hospital when she knew her job was in jeopardy. Without knowing why the granddaughter went to the emergency room or why the claimant had to take her daughter and granddaughter to the hospital and stay with them, the evidence does not establish reasonable grounds for the claimant reporting to work four hours late when she knew her job was in jeopardy. The claimant

violated the employer's attendance policy and committed work-connected misconduct. As of March 18, 2012, the claimant is not qualified to receive benefits.

An issue of overpayment or whether the claimant is eligible for a waiver of overpayment for any benefits she has received since March 18, 2012, will be remanded to the Claims Section to determine.

**DECISION:**

The claimant's request to reopen the hearing is denied. The representative's April 16, 2012 determination (reference 01) is reversed. The employer discharged the claimant for work-connected misconduct because the claimant violated the employer's attendance policy. The claimant is disqualified from receiving unemployment insurance benefits as of March 18, 2012. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment of benefits she may have received since March 18, 2012, is **Remanded** to the Claims Section to determine.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw