

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM E HARRIS
Claimant

APPEAL NO: 15A-UI-02483-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 01/25/15
Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge
Iowa Code § 96.3(7) – Overpayment of Benefits
871 IAC 26.14(7)(b) and (c) – Reopen Hearing

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's February 11, 2015 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 nondisqualifying reasons. The claimant did not respond to the hearing notice or participate at the hearing. Kristi Fox, a human resource clerk, appeared on the employer's behalf.

After the hearing was closed and the employer had been excused, the claimant called the Appeals Bureau. The claimant 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's request to reopen the hearing is denied and he is not qualified to receive benefits.

ISSUES:

Did the claimant establish good cause to reopen the hearing?

Did the claimant voluntarily quit this employment for reasons that qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

Has the claimant been overpaid any benefits?

If the claimant has been overpaid, is he responsible for paying back the overpayment or should the employer's account be charged for the overpayment?

FINDINGS OF FACT:

The claimant started working for the employer on July 14, 2014. He worked as a full-time production employee. The employer's policy informs employees that if they leave work early without authorization, the employer concludes they have abandoned the job and this is grounds for termination.

On January 14, 2015, the claimant asked his immediate supervisor and the general supervisor if he could leave work early. The claimant told the supervisor he was distraught because he had girlfriend issues and as a result of medical issues he had to leave work early. Both supervisors denied the claimant's request to leave work early and told him that if he left, he would be discharged. The claimant left work early on January 14, 2015. He did not call or return to work after January 14, 2015. The employer discharged him on January 20, 2015, for leaving work early without permission on January 14 and for failing to call or return to work after January 14, 2015.

The claimant established a claim for benefits during the week of January 25, 2015. He has filed claims for the weeks ending January 31 through April 4, 2015. He received his maximum weekly benefit amount of \$192 for each of these weeks.

The employer participated at the fact finding interview. At this interview, the claimant informed the claims specialist he had to leave work because of his state of mind he did not trust himself working with knives, which his job required.

The claimant received the hearing notice before the scheduled hearing, but noted on his calendar the hearing was scheduled on March 31 instead of March 30. The claimant called on March 30 around noon to provide his telephone number for the hearing he understood was scheduled the next day. The claimant had not called before because he did not have a phone and had to make arrangements with a person he trusted to use their phone for the hearing. Since the claimant called the Appeals Bureau after the hearing was closed and the employer had been excused, 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). The claimant received the hearing notice, but noted on his appointment calendar that the hearing was scheduled on Tuesday, March 31, instead of Monday, March 30. Since the hearing notice clearly states the hearing will be scheduled on **Monday, March 30**, the claimant failed to read and follow the hearing notice instructions. The claimant did not establish good cause to reopen the hearing, and his request to reopen is denied.

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The evidence does not establish that the claimant intended to quit. Instead, the employer discharged him on January 20 after the claimant left work without authorization even though two supervisors told him he would be discharged if he left work early on January 14. The employer waited for the claimant to call or return to work after January 14 to explain why he left early, but the claimant did not contact the employer again.

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 claimant knew or should have known after two supervisors denied his request to leave work early that if he left work on January 14, the employer could discharge him. The claimant may have been distraught on January 14, but he did not attempt to contact the employer afterwards to provide information that it was not safe for him to work on January 14, 2015. The claimant's failure to call or report to work after January 14 in addition to leaving work early after two supervisors told him he could not amounts to work-connected misconduct. As of January 25, 2015, the claimant is not qualified to receive benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3(7). Based on this decision, the claimant is not legally entitled to receive benefits for the weeks ending January 31 through April 4, 2015. The claimant has been overpaid \$1920 in benefits he received for these weeks.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)a, b. The evidence establishes the employer participated at the fact-finding interview. Therefore, the claimant is responsible for paying back the overpayment of benefits he received.

DECISION:

The claimant's request to reopen the hearing is denied. The representative's February 11, 2015 determination(reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. As of January 25, 2015, the claimant is disqualified from receiving unemployment insurance benefits. 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.

The claimant has been overpaid \$1920 in benefits he received for the weeks ending January 31 through April 4, 2015. The claimant is legally responsible for paying back this overpayment amount.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css