

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**Appeal Number: 04A-UI-03037-DWT  
OC 02/15/04 R 01  
Claimant: Appellant (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**JOE C TWOMEY  
711 AVE G  
COUNCIL BLUFFS IA 51501**

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**CON AGRA  
COUNCIL BLUFFS  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283**

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Joe C. Twomey (claimant) appealed a representative's March 10, 2004 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Con Agra – Council Bluffs (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 7, 2004. The claimant responded to the hearing notice but was not available for the hearing. A message was left on his answering machine to contact the Appeals Section immediately. Julie Millard, a human resource generalist, appeared on the employer's behalf.

After the hearing had been closed and the employer had been excused, the claimant contacted the Appeals Section. He 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 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 October 13, 1997. He worked full time as a lead cook.

Prior to February 2, 2004, the claimant received two disciplinary warnings from the employer. On October 6, 2003, the claimant received a warning for failing to take a viscosity read on a brownie mix after he had been instructed to do so. On October 18, 2003, the employer gave the claimant a written warning and suspended him for three days after he failed to turn off an oil pump. The employer warned the claimant on October 18, 2003, he could be discharged if he had any other performance problems.

On January 25, 2004, the claimant failed to notify anyone right away that a scoop had dropped into some product. The claimant told the employer he had tried to find his supervisor, but could not find him. When the claimant did not see his supervisor, he stayed in the break room for his break. The claimant's supervisor was in his office when this incident took place and there were employees with pagers that would have paged the claimant's supervisor if the claimant had asked anyone to do this.

The claimant's supervisor found pieces of the scoop in the blending room about 45 minutes after the scoop had been dropped. The employer had to throw away this product. The employer suspended the claimant on January 25, 2004.

After investigating the incident and reviewing the claimant's personnel file, the employer discharged him on February 2, 2004. The employer discharged the claimant for intentionally failing to report an incident that adversely impacted the employer.

Hearing notices were mailed to the parties on March 23, 2004. The claimant responded to the hearing notice on April 1, 2004. The phone number the claimant provided was called but the claimant was not available. A message was left for the claimant to contact the Appeals Section immediately.

The claimant and his wife are separated. She had a scheduled doctor's appointment at 9 a.m. on April 7 and the claimant went to her house to watch their son while she was gone. The claimant did not think about contacting the Appeals Section to provide her phone number. When the claimant returned to his home, at 11:45 a.m. on April 7, he called the Appeals Section. By the time the claimant called for the 10:00 a.m. hearing it had been closed and the employer had been excused. The claimant then 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).

When the claimant was not at the phone number he previously provided to the Appeals Section, it was his responsibility to contact the Appeals Section again and provide the phone number at which he could be contacted. The claimant's wife's medical appointment was not an emergency situation, but instead was a previously scheduled appointment. The claimant failed to follow the instructions on the hearing notice when he did not provide the telephone number at which he could be contacted at 10:00 a.m. on April 7, 2004. The claimant did not establish good cause to reopen the hearing.

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 claimant knew or should have known his job was in jeopardy in mid October 2003 after the employer suspended him for failing to turn off an oil pump. On January 25, 2004, the claimant again failed to take the appropriate steps by promptly notify his supervisor or anyone else in management that a scoop had been dropped into some product. The claimant's decision to take a break instead of telling a supervisor about the scoop amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. The employer discharged the claimant for reasons constituting work-connected misconduct.

**DECISION:**

The claimant's request to reopen the hearing is denied. The representative's March 10, 2004 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 February 15, 2004. 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