

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL G JOHNSON
Claimant

APPEAL NO: 11A-UI-04917-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 02/06/11
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's March 31, 2011 determination (reference 02) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had voluntarily quit his employment for reasons that do not qualify him to receive benefits. The claimant responded to the hearing notice, but was not available for the hearing. A message was left for the claimant to contact the Appeals Section immediately. Brandy Whittenbaugh, a staffing consultant, appeared on the employer's behalf.

After the hearing had been closed and the employer's witness was excused, the claimant contacted the Appeals Section to participate in the hearing. 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 finds the claimant qualified to receive benefits.

ISSUES:

Is there good cause to reopen the hearing?

Did the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

After the claimant registered to work for the employer, the employer assigned him to job on August 16, 2010. On December 2, 2010, the client told the employer the claimant needed to be removed because he had engaged in a verbal confrontation with one of the client's employees. The claimant and this employee personally knew each other.

On December 2, 2010, the employer contacted the claimant and informed him that he no longer worked at this job assignment even though the claimant had not completed the work the client had for him to do. The employer told the claimant that the employer would try to find him something else.

When the employer called the claimant on December 6, the claimant informed the employer he was working for another temporary employment firm.

The claimant responded to the hearing notice and made plans to participate in the hearing. The claimant was working on an assembly line and made arrangements to be relieved at 11:00 a.m. so he could participate in the hearing. A malfunction occurred on the assembly line so the claimant could not be relieved until 11:30 a.m. As soon as the claimant was relieved, he contacted the Appeals Section. He 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 intended to participate in the hearing and made arrangements at work to be relieved so he could participate at the 11:00 a.m. hearing. Unfortunately, the claimant did not think about contacting the Appeals Section to find out if the hearing could be rescheduled to a time he took a scheduled break time or when he was off work. Even though the claimant made arrangements to be relieved from work at 11:00 a.m., he took a risk that his relief person would be able to take over his job so he could timely participate at the hearing. The claimant did not establish good cause to reopen the hearing. His request to reopen the hearing is denied.

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(1), (2)a. The claimant did not voluntarily quit his employment. Instead, the employer ended his assignment early after the client asked that the claimant be removed.

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).

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).

Even though the client asked the claimant to be removed from the assignment, the employer told the claimant they would look for another assignment for him and actually called him on Monday, December 6, to offer him another assignment. The claimant did not accept the other job assignment because he was already working for another temporary employment firm.

The employer had no choice but to follow through on the client's request to end the claimant's job assignment on December 2, 2010. The facts do not, however, establish that claimant committed work-connected misconduct. Therefore, as of December 2, 2010, he is qualified to receive benefits.

DECISION:

The claimant's request to reopen the hearing is denied. The representative's March 31, 2011 determination (reference 02) is reversed. The claimant did not voluntarily quit his employment. Instead the employer ended his job assignment for business reasons, but did not establish that the claimant committed work-connected misconduct. As of December 2, 2010, 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