

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLY L NORTON JANSSEN
Claimant

APPEAL NO: 10A-UI-00295-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KUM & GO LC
Employer

OC: 11/29/09
Claimant: Respondent (1)

Section 96.5- 2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's December 29, 2009 decision (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. A telephone hearing was held on February 15, 2010. The claimant responded to the hearing notice, but did not answer her phone when she was called for the hearing. A message was left for the claimant to contact the Appeals Section immediately if she wanted to participate in the hearing. Mary Chambers, the general manager, appeared on the employer's behalf.

After the hearing had been closed and the employer had been excused from the hearing, the claimant contacted the Appeals Section. She requested that the hearing be reopened. Based on 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 employer hired the claimant to work as a full-time clerk on March 9, 2009. The employer's policy informs employees that if they have one no-call, no-show incident, they will be discharged. The employer puts up the work schedule two weeks in advance.

On Saturday, August 29, 2009, the employer gave the claimant a verbal warning for not being professional at work. The claimant was not happy about receiving the warning. The claimant worked as scheduled on August 30. The claimant was scheduled to work on August 31. She did not call or report to work on Monday. The employer unsuccessfully tried to contact the claimant on August 31 to find out why she was not at work. Chambers had to work the claimant's shift on August 31.

On September 2, the claimant called to find out when she was next scheduled to work. Chambers told the claimant she was no longer on the schedule because she had not called or reported to work as scheduled on August 31. The claimant hung up on Chambers.

On February 15, the claimant contacted the Appeals Section after the hearing had been closed and the employer had been excused. The claimant reported that she had not heard her cell phone ring when she was called at 11:00 a.m. for the hearing. The claimant did not realize she had been called until she received another call and noticed she had a voice message. The claimant then responded to the message left at 11:00 a.m. 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 acknowledged she received a phone call for the hearing, but did not hear her phone ring. Since it took another phone call before the claimant noticed she had a message on her phone, it appears that the claimant forgot about the scheduled 11:00 a.m. hearing. The claimant did not establish good cause to reopen the hearing and her request 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 section 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).

Since the claimant did not have an attendance problem prior to August 31 and she worked after she received a verbal warning on August 29, 2009, the evidence does not establish that she intentionally failed to work as scheduled on August 31, 2009. The employer established business reasons for discharging the claimant. An isolated incident of failing to work as scheduled does not constitute work-connected misconduct. Therefore, as of November 29, 2009, the claimant is qualified to receive benefits.

DECISION:

The claimant's request to reopen the hearing is denied. The representative's December 29, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the evidence does not establish that the claimant committed work-connected

misconduct. As of November 29, 2009, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs