

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL S HELM

Claimant

APPEAL NO: 10A-UI-15180-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC

Employer

OC: 10/03/10

Claimant: Appellant (1)

Section 96.5-2-a – Discharge
871 IAC 26.14(7) – Late Call

STATEMENT OF THE CASE:

Michael S. Helm (claimant) appealed a representative's October 29, 2010 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from West Liberty Foods, L.L.C. (employer). Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held on December 16, 2010. The claimant received the hearing notice and responded by calling the Appeals Section on November 23, 2010. He indicated that he would be available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, the claimant was not available at that number; therefore, the claimant did not participate in the hearing. The employer responded to the hearing notice and indicated that Nikki Bruno would participate as the employer's representative with two other witnesses, Bo Boecker and Maria Bozaan. When the administrative law judge contacted the employer for the hearing, Ms. Bruno agreed that the administrative law judge should make a determination based upon a review of the available information including her informal statement. The administrative law judge considered the record closed at 9:10 a.m. At 9:19 a.m., the claimant called the Appeals Section and requested that the record be reopened. Based on a review of the available information and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Should the hearing record have been reopened? Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant received the hearing notice prior to the December 16, 2010 hearing. The instructions inform the parties that they are to be available at the specified time for the hearing, and that if they "cannot be reached at the number you provided when the judge calls for the hearing," the judge may decide the case on the basis of other available evidence. On November 23 the claimant had provided a number to be reached for the hearing, and had been

given a control number as verification that the number was logged into the appeal conference call data base. Sometime after November 23 the claimant switched phone services and phone numbers; he made a change on his underlying claim record when he made a weekly claim for unemployment insurance benefits, but he neglected to contact the Appeals Section to change the number in the hearing conference call system to specify he wished to be reached at the new number for the hearing.

The claimant started working for the employer on October 8, 2007. He worked full time in the dry storage division of the employer's business. His last day of work was October 4, 2010. The employer discharged him on that date. The stated reason for the discharge was consumption of an illegal substance while on lunch break.

On September 30 the claimant left the premises with some coworkers over his lunch break. Upon his return, it was reported to the employer that the claimant smelled of marijuana. He was approached by two managers, Ms. Bruno and Mr. Boeker; Mr. Boeker also smelled marijuana on the claimant. The claimant admitted to Ms. Bruno and Mr. Boeker that he had smoked marijuana. Because of his admission, he was not offered or ordered to report for a drug test. He was then sent home on suspension. On October 4 he was brought back in and discharged for violation of the employer's policies regarding use of an illegal substance while on a lunch break and prior to reporting back for work.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant's request to reopen the hearing should be granted or denied. After a hearing record has been closed the administrative law judge may not take evidence from a non-participating party but can only reopen the record and issue a new notice of hearing if the non-participating party has demonstrated good cause for the party's failure to participate. 871 IAC 26.14(7)b. The record shall not be reopened if the administrative law judge does not find good cause for the party's late contact. *Id.* Failing to read or follow the instructions on the notice of hearing are not good cause for reopening the record. 871 IAC 26.14(7)c.

The claimant was not available at the number he had provided for the hearing when the administrative law judge called that number for the hearing. He did not advise the Appeals Section that his number had been changed until 9:19 a.m., after the hearing had been closed. Although the claimant intended to participate in the hearing, he failed to read or follow the hearing notice instructions and did not contact the Appeals Section prior to the hearing. 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. The claimant did not establish good cause to reopen the hearing. Therefore, the claimant's request to reopen the hearing is denied.

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979);

Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's consumption of an illegal substance contrary to the employer's policies shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's October 29, 2010 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of September 30, 2010. This disqualification continues until the claimant 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css