

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMANTHA BEEBE

Claimant

APPEAL NO: 13A-UI-06012-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEVELOPMENTAL SERVICES OF IOWA

Employer

OC: 04/28/13

Claimant: Respondent (2/R)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's May 16, 2013 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 timely responded to the hearing notice, but was not available for the hearing. She contacted the Appeals Section an hour after the hearing had been scheduled. By the time the claimant contacted the Appeals Section, the hearing had been closed and the employer had been excused. The claimant requested that the hearing be reopened. Jennifer Bogacz, the human resource manager, appeared on the employer's behalf.

Based on the claimant's request to reopen the hearing, the evidence, the arguments of the parties, and the law, the administrative law judge denies the claimant's request to reopen the hearing and concludes the claimant is not qualified to receive benefits.

ISSUES:

Did the claimant establish good cause to reopen the hearing?

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in August 2012. The employer hired the claimant to work as a full-time direct support professional to work with clients who have developmental disabilities.

On March 2, 2013, the employer received a call from a Wal-Mart employee. A stranger reported that the claimant was yelling at a client and dragging the client around Wal-Mart. When the employer talked to the claimant about this report, she denied she had yelled at or had been

dragging the client around Wal-Mart. The employer gave the claimant a written counseling on March 8, 2013. The employer retrained the claimant about respecting clients, reminded her about perceptions other people may have and warned the claimant that if something like this happened again, she could be discharged.

On April 2, the roommate of the client who had been in Wal-Mart reported that the claimant was mean to the client. The roommate reported that the claimant verbally abused the client by using profanity when she talked to the client, that the claimant poked the client, squeezed the client's cheeks and intentionally moved a chair when the client tried to sit down. The employer's program coordinator talked to the claimant about this complaint. The claimant again denied the roommate's report.

The employer suspended the claimant on April 2. The employer investigated by talking to the client and the client's roommate. They both reported that the claimant was mean to this client all the time. The employer noticed the client had regressed since the claimant had been assigned to the client. The employer attributed the client's regression to the claimant's treatment of this client. On April 17, the employer discharged the claimant for the way she continued to mistreat a client.

The claimant established a claim for benefits during the week of April 28, 2013. The claimant has filed weekly claims.

When the claimant was called for the hearing scheduled hearing, she was not available to participate. The claimant contacted the Appeals Section about an hour after the scheduled hearing. The claimant asked that the hearing be reopened because she reported that she had relied on a Workforce representative to contact the Appeals Section to ask for a continuance on the claimant's behalf. The claimant asserted she was attending a mandatory session at her local Workforce office at the time of the hearing.

Since the claimant asserted a Workforce representative told the claimant they would contact the Appeals Section to postpone the hearing on the claimant's behalf, the claimant was asked to fax a written statement from this representative to verify the claimant's assertions. The claimant indicated this would not be a problem and she would fax this statement on June 27, 2013. As of July 29, the administrative law judge has not received any statement from the claimant or a Workforce representative to verify the claimant's assertions.

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). If the claimant was participating in a mandatory meeting at the local Workforce office, she had advance notice about the meeting. Since the claimant did not fax a statement from her local Workforce representative to verify the representative told the claimant she would contact the Appeals Section on the claimant's behalf and ask for a continuance, the evidence does not establish a Workforce representative told the claimant she would request a postponement on her behalf. The claimant did not take reasonable steps to participate in the hearing if she was attending a mandatory meeting at her local Workforce office at the same time the hearing was scheduled. The claimant did not establish good cause to reopen the hearing. Therefore, her request to reopen the hearing 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 § 96.5(2)a. 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).

On March 8, 2013, when the employer gave the claimant a corrective warning for the way she treated a client at Wal-Mart, the claimant knew or should have known her job was in jeopardy if she continued to mistreat or gave the appearance of mistreating a client. After the employer received a second complaint about the way the claimant treated the same client in less than a month, the employer concluded the claimant substantially disregarded the employer's interests.

The evidence indicates the claimant swore at a client, poked the client, squeezed the client's cheeks, and was mean to a client. The employer discharged the claimant for committing work-connected misconduct. As of April 28, 2013, the claimant is not qualified to receive benefits.

The issue of overpayment and whether the claimant will be required to pay back any overpayment will be remanded to the Claims Section to determine.

DECISION:

The claimant's request to reopen the hearing is denied. The representative's May 16, 2013 determination (reference 01) is reversed. The employer discharged the claimant because she committed work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of April 28, 2013. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

The issues of overpayment and whether the claimant will be required to repay the overpayment is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs