

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JESSICA L CLARK**  
Claimant

**JOHN DEERE DES MOINES WORKS**  
Employer

**APPEAL NO. 14A-UI-01125-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/22/13  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism/Tardiness  
871 IAC 24.32(8) – Current Act of Misconduct  
871 IAC 24.16(7) – Request to Reopen

**STATEMENT OF THE CASE:**

The claimant appealed a department representative's decision dated January 21, 2014, reference 01, that held she was discharged for misconduct on November 22, 2013, and benefits are denied. A hearing was held on February 20, 2014. The claimant participated. The employer did not participate.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds that: The claimant was hired on February 28, 2011 and last worked as a full-time assembler in November 2013. The claimant was on a disability due to health issues from August 22, 2013 through October. She received an unrestricted work release to go back to work.

Claimant report a period of absences in November due to continuing health issues. The employer met with claimant on November 22, 2013. Although claimant had doctor excuses for her recent period of absence, the employer terminated claimant.

The employer requested Paul Blalock participate in this hearing at a telephone hearing provided and as recorded on the UI Appeals C2T control system. Blalock was called at the time scheduled for the hearing and he did not answer. A message was left on a recording machine. Blalock called at 8:13 a.m. He left his office prior to the scheduled time and did not return in time to receive the call. The record was closed prior to the employer late call.

**REASONING AND CONCLUSIONS OF LAW:**

871 IAC 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

At issue is a request to reopen the record made after the hearing had concluded. The request to reopen the record is denied because the party making the request failed to participate by reading and following the instructions on the hearing notice.

The administrative law judge concludes employer failed to establish a good cause to reopen the record and to reschedule the hearing. The employer was not available when called for the hearing and it failed to timely call before a close of the record. An internal matter is not good cause for failing to be available for the hearing.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The administrative law judge concludes that the employer failed to establish a current act of misconduct in the discharge of the claimant on November 22, 2013, for excessive “unexcused” absenteeism. Claimant states her recent absenteeism was due to properly reported and verified doctor excuse illness that is not misconduct. The employer failed to participate in this matter and offer evidence of job disqualifying misconduct.

**DECISION:**

The decision of the representative dated January 21, 2014, reference 01, is reversed. The claimant was not discharged for a current act of misconduct in connection with employment on November 22, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs