IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

LINDA J BOHENKAMP
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FT MADISON IA 52627

HUMPHREY HOSPITALITY MANGT INC
SUPERTEL HOSPITALITY MANGT
PO BOX 1448
NORFOLK NE 68702-1448

Appeal Number: 04A-UI-05122-DWT
OC 04/04/04 R 04
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Humphrey Hospitality Management, Inc. (employer) appealed a representative's April 26, 2004 decision (reference 02) that concluded Linda J. Bohenkamp (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 27, 2004. The claimant participated in the hearing. The employer responded to the hearing notice but the employer's representative/witness was not available for the hearing.

The employer contacted the Appeals Section after the hearing had been closed and the claimant had been excused from the hearing. The employer made a request to reopen the hearing. Based on the employer's request to reopen the hearing, the evidence, 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 claimant started working for the employer on May 30, 2003. The claimant worked as a part-time housekeeper. She usually worked 20 to 30 hours a week.

In October 2003, the employer warned the claimant about her attendance. The employer told the claimant that if she had any more attendance problems in the next two months, she would be discharged. The claimant did not have an attendance problem the next two months.

During the week of April 4, 2004, the claimant forgot to punch in when she arrived at work on April 6. It was not until April 14 the employer told the claimant she was considered late for work on April 6. On April 8, the claimant agreed to work for another employee at 8:00 a.m. At 7:30 a.m. the claimant called the employer because her daughter was missing. The claimant's supervisor was able to get another employee to come to work at 8:00 a.m. The employer agreed the claimant could start work at 10:00 a.m. Around 10:00 a.m. the claimant again talked to her supervisor because she still had not found her daughter. The claimant wanted to look one more place for her daughter before she reported to work and asked her supervisor for permission to do this. Although the claimant's supervisor appeared upset with the claimant, she told the claimant she had to be at work by 11:00 a.m. The claimant found her daughter and reported to work by 10:50 p.m.

On April 10, the claimant called and asked the employer if it was all right for her to stop and get her glasses repaired before she reported to work. The claimant's supervisor told the claimant this would not be a problem. The claimant was a few minutes late on April 10.

The claimant established a claim for unemployment insurance benefits during the week of April 4 because the employer had called her on two days and told her she did not have to report to work as scheduled. During this week, the employer trained two new employees who worked more hours than the claimant. The claimant worked 12 to 14 hours during the week of April 4, 2004.

On April 14, 2004, the employer discharged the claimant. The employer told the claimant she was discharged because she reported to work late too many times.

Although the employer responded to the hearing notice by providing the name of the employer's witness and the phone number in which to contact the witness, the employer's representative/witness was not available at the time of the hearing. The employer's witness contacted the Appeals Section after the hearing had been closed and the claimant had been excused from the hearing.

The employer's witness was not available for the scheduled hearing because he forgot about the hearing. The witness had it in his mind that May 27 was Friday instead of Thursday, even though the hearing notice indicated the hearing would be held on Thursday, May 27.

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 employer's request to reopen the hearing is denied. Forgetting about a hearing is understandable, but it does not establish good cause to reopen the hearing.

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 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).

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).

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(8).

The facts show the employer addressed an attendance problem with the claimant in October 2003. Since the claimant improved her attendance within the time the employer gave her in October, she did not realize her job was in jeopardy because of her attendance. Another employee, who had quit, told the claimant the employer was training two new employees because the employer wanted to discharge her. The evidence does not establish that during the week of April 4 the claimant intentionally or substantially disregarded the employer's interests on April 6, 8 or 10. The facts do not establish that the claimant committed a current act of work-connected misconduct. As of April 11, 2004, the claimant is qualified to receive unemployment insurance benefits based on the reasons for her separation.

DECISION:

The employer's request to reopen the hearing is denied. The representative's April 26, 2004 decision (reference 02) is affirmed. The employer discharged the claimant for reasons that do not constitute a current act of work-connected misconduct. As of April 11, 2004, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/b