

**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**

**Appeal Number: 04A-UI-03529-DWT  
OC 06/29/04 R 12  
Claimant: Respondent (1)**

**AMY M HASSON  
830 – 1<sup>ST</sup> AVE LOT 14  
EAST MOLINE IL 61244**

**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, 4<sup>th</sup> 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.

**MAID FOR YOU CLEANING  
4708 – 26<sup>TH</sup> AVE  
MOLINE IL 61265**

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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Maid For You Cleaning (employer) appealed a representative's March 17, 2004 decision (reference 03) that concluded Amy M. Hasson (claimant) was qualified to receive unemployment insurance benefits, and the employer's could be 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 April 21, 2004. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's representative/witness could be contacted to participate in the hearing. As a result, no one represented the employer.

After the hearing had been closed and the claimant had been excused, the employer contacted the Appeals Section. The employer made a request to reopen the hearing. Based on the employer's request to reopen the hearing, 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 claimant started working for the employer in September 2003. The claimant worked part-time cleaning houses. During her employment, the claimant was absent 27 days. The employer gave the claimant a "leave of absence" for 15 of these days so the claimant could make arrangements for childcare. The remaining 12 days the claimant was absent occurred because either she or her three-year old son was ill. Prior to February 17, the claimant had no understanding her job was in jeopardy if she was absent. If the claimant would have known her job was in jeopardy because of her failure to work everyday as scheduled, the claimant could have made arrangements with her mother to take care of her son at least some of the time.

On February 17, 2004, the claimant's son was again ill and she had to take him to the doctor. The claimant notified the employer she was unable to work as scheduled. When the claimant was unable to work on February 17, the employer told the claimant her son was ill too much for the claimant to continue to work for the employer. Shortly after February 17 the source of her son's illness was diagnosed. After receiving the proper medication the claimant's son has recovered from his medical problems.

The employer received the hearing notice prior to the scheduled 10:00 a.m. hearing on April 21. The employer did not read the hearing instructions. As a result, the employer did not follow the instructions on the hearing notice and did not contact the Appeals Section prior to the hearing. The employer did not contact the Appeals Section until after the April 21 hearing had been closed and the claimant had been excused. The employer 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 employer did not participate at the scheduled hearing because the employer did not read or follow the hearing instructions. Even though the employer made an honest mistake, the law specifically states that a failure to read or follow instructions does not constitute good cause to reopen the hearing. Therefore, the employer's 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 §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).

Based on the number of times the claimant was absent because of her son's medical problems, the employer had compelling business reasons for discharging the claimant. The claimant, however, believed the employer understood her situation and did not realize her job was in jeopardy. If the employer would have warned the claimant she could be discharged if she continued to be absent from work, the claimant could have made arrangements with her mother to help take care of her son when he was ill. On February 17, 2004, the claimant was the only person who could take her son to the doctor or at least she felt she was the only person. The claimant notified the employer when she was unable to work as scheduled. Her repeated absences probably made it difficult for the employer to complete the work that had been assigned to the claimant. The evidence does not establish that the claimant intentionally failed to work as scheduled in total disregard of the employer's interests. Instead, when she did not report to work it was primarily because her son was ill and he needed someone to take care of him. The claimant did not commit work-connected misconduct. Therefore, as of February 15, 2004, the claimant is qualified to receive unemployment insurance benefits.

The claimant established a claim for unemployment insurance benefits during the week of June 29, 2003. The employer is not one of the claimant's base period employers during her current benefit year. As a result, the employer's account will not be charged during the claimant's current benefit year.

#### DECISION:

The employer's request to reopen the hearing is denied. The representative's March 17, 2004 decision (reference 03) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of February 15, 2004, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

dlw/kjf