

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EMMA WOODS
Claimant

APPEAL NO: 12A-UI-07138-S

**ADMINISTRATIVE LAW JUDGE
DECISION**

TM1 STOP LLC
Employer

**OC: 05/13/12
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge
871 IAC 26.8(2) – Request for Postponement
871 IAC 24.32(1) – Decision on the Record

STATEMENT OF THE CASE:

The employer appealed a department decision dated June 7, 2012, reference 01, that held the claimant was not discharged for misconduct on May 14, 2012, and benefits are allowed. A hearing was held in Cedar Rapids, Iowa on August 15, 2012. The claimant, and Attorney Derek Johnson, participated. The employer did not participate.

The UI Appeals Section received a request from employer's attorney to postpone this hearing that was received on August 14, 2012, only two days prior to the scheduled hearing. The employer attorney had not filed an appearance in this matter and made no attempt to contact the ALJ about this request. The employer attorney knew claimant's attorney would not agree to the continuance.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on May 26, 2009, and last worked for the employer as a full-time processor on May 11, 2012. She was discharged by the employer.

The employer failed to appear for the hearing.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 26.8(2) provides:

(2) A hearing may be postponed by the presiding officer for good cause, either upon the presiding officer's own motion or upon the request of any party in interest. A party's

request for postponement may be in writing or oral, provided the oral request is tape-recorded by the presiding officer, and is made not less than three days prior to the scheduled hearing. A party shall not be granted more than one postponement except in the case of an extreme emergency.

The administrative law judge concludes the employer failed to make a timely request to postpone the hearing, and it is denied.

There was no employer attempt to contact the ALJ assigned this matter to request the postponement at least three days prior to the hearing and the employer knew claimant's attorney would not agree to it.

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.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on May 11, 2012. The employer failed to participate in this matter and offer evidence of job disqualifying misconduct.

DECISION:

The department decision dated June 7, 2012, reference 01, is affirmed. The claimant was not discharged for misconduct on May 11, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css