

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SAM FISHER
Claimant

APPEAL NO. 14R-UI-08663-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMEDY INTELLIGENT STAFFING INC
Employer

OC: 05/11/14
Claimant: Respondent (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Remedy Intelligent Staffing, Inc. (employer/appellant) appealed an unemployment insurance decision dated June 3, 2014, (reference 01), which held that Sam Fisher (claimant/respondent) was eligible for unemployment insurance benefits. This was originally scheduled for hearing at 2:00 p.m. on July 1, 2014, but the employer/appellant did not provide its telephone number prior to or at the scheduled time of the hearing. The employer/appellant called the Appeals Section on July 1, 2014, at 2:38 p.m. but did not provide good cause for failing to follow the hearing notice instructions, so a default decision was issued.

The employer/appellant appealed the decision to the Employment Appeal Board and provided a confirmation number from registering online on June 16, 2014, through the C2T system. The employer/appellant stated that their records indicate the administrative law judge was Deb Wise and stated that changing the hearing officer is beyond their control. In fact, the employer/appellant had another hearing scheduled with Judge Wise for Appeal Number 14A-UI-05933-DWT on July 2, 2014, 11:30 a.m. and the same employer witness who called late for the hearing on July 1, 2014, participated in this hearing on July 2, 2014. It appears the employer made a mistake and on June 16, 2014, twice registered for this appeal hearing but failed to register for the case herein. The Appeals Section did not change judges and did not err in collecting the information.

The Board remanded for a new hearing and after hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 10, 2014. The claimant participated in the hearing. The employer participated through Wendy Messenbrink, Customer Service Manager.

ISSUES:

The issues are whether the claimant is disqualified for benefits, whether she was overpaid unemployment insurance benefits, whether she is responsible for repaying the overpayment and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked as a full-time general laborer from December 10, 2012, through March 10, 2014, when he was discharged. The employer discharged him for leaving company property while on the clock. The claimant testified that his supervisor directed him to walk across the street to wake up a co-worker and that it was not the first time his supervisor had directed him to do that. The supervisor did not participate but the employer witness testified the supervisor denied doing that.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Misconduct is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged for leaving company premises while on the clock. He testified that his supervisor directed him to do that and the employer could only rebut that testimony with hearsay evidence. Hearsay testimony is admissible in hearings of this nature. Iowa Code § 17A.14(1) (2011). However, the employer's hearsay testimony that the claimant's supervisor did not direct him to leave the property to wake up a co-worker does not overcome his credible, sworn testimony to the contrary. The employer has failed to meet its burden. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

DECISION:

The unemployment insurance decision dated June 3, 2014, (reference 01), is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css