

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS A WATZEK
Claimant

**AVENTURE STAFFING & PROFESSIONAL
SERVICES**
Employer

APPEAL NO. 12A-UI-06732-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/25/11
Claimant: Respondent (5)

Section 96.5-2-a – Discharge
871 IAC 26.14(7) – Request to Reopen

STATEMENT OF THE CASE:

The employer appealed from a representative's decision dated June 6, 2012, reference 04, that allows claimant benefits by reason of him notifying his employer of a job completion within three working days of April 30, 2012. A telephone hearing was held on July 2, 2012. The claimant did not participate. Kayla Neuhalfen, HR representative and Sheryl Lee, Spencer Branch Manager, participated for the employer. Employer Exhibit One was received as evidence.

ISSUE:

Whether claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony, having considered the evidence in the record, finds that: The claimant began work on June 26, 2009, and he signed an employer policy that provides he must seek re-assignment within three days of job completion. He last began a full-time temporary assignment at Maurer Manufacturing on March 12, 2012.

Claimant was a no-call no-show to work on April 30, and Maurer advised the employer it was ending his assignment for this reason and other attendance issues. The employer called claimant on May 1 to inform him his assignment was ended at Maurer. It did not offer him any further work at that time or when he came in to get his paycheck on May 11. Claimant had not received any discipline for attendance issues.

Claimant was not available when called for the hearing at the cell phone number he provided. He has had issues in the past with reception where he is currently working. He called in after the close of the record and admitted he had a recorded message calling him for the hearing.

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 claimant failed to offer a good cause to reopen the record. The call to claimant for the hearing was recorded that establishes the communication went through. His failure to call in response to the message prior to the close of the record is without good cause.

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 failed to establish claimant was discharged for misconduct in connection with employment on May 1, 2012. Claimant did not complete his last work assignment that makes the three-day upon completion of assignment inapplicable to the employment separation issue in this matter.

Claimant's work assignment was ended by the employer-client for an incident that is not sufficient to establish job disqualifying misconduct (i.e., one no-call no-show to work). While the claimant might have had other attendance issues, the employer had not disciplined him for that

conduct. The employer decision not to offer claimant further work on May 1 or May 15 is tantamount to a discharge, as he had expressed a desire for continuing employment on May 15.

DECISION:

The department decision dated June 6, 2012, reference 04, is modified. The employer discharged claimant for no disqualifying misconduct on May 1, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs