

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MISTY R BRIGGS

Claimant

APPEAL NO: 13A-UI-08398-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 06/23/13

Claimant: Appellant (2)

Iowa Code § 96.5(2) a – Discharge
871 IAC 26.14(7)(b) and (c) – Request to Reopen Hearing

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's July 15, 2013 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant did not respond to the hearing notice or participate in the hearing. The employer responded, but was not available for the hearing.

The claimant called the Appeals Section for the first time 20 minutes after scheduled hearing. She requested that the hearing be reopened. Based on the claimant's request to reopen the hearing, the administrative record, and the law, the administrative law judge must deny the claimant's request to reopen the hearing, but holds her qualified to receive benefits.

ISSUES:

Is there good cause to reopen the hearing?

Did the employer discharge the claimant for reasons that amount to work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in January 2008. She worked as a full-time laborer. The claimant received a copy of the employer's attendance policy. The employer's attendance policy informs employees they will be discharged if they accumulate 14 attendance points in a rolling calendar year.

During the claimant's employment, she received written warnings for excessive absenteeism. In January 2013, the employer gave the claimant a letter informing she had 16.5 attendance points from June 20, 2012, through January 6, 2013. On April 16, 2013, the claimant received a written warning and was counseled about her attendance.

After the April 16 warning, the claimant was absent on April 29, and June 18, through 21, 2013. She called in sick each of these days. Between September 14, 2012, and June 21, 2013, the claimant had 16.5 attendance points. All of her absences with the exception of September 18, she called in and reported she was ill. On June 18, the claimant was late for work because she overslept. Since the claimant had more than 14 attendance points, she violated the employer's attendance policy and the employer discharged her on June 22, 2013.

A hearing notice was mailed to the parties on July 24, 2013. The hearing notice informed the parties a hearing was scheduled on August 21 at 10:30 a.m. The notice also stated that if a party did not call the Appeals Section before the scheduled hearing, she would not be called for the hearing.

The claimant received the hearing notice before August 21, 2013. She did not read or follow the instructions on the notice. The first time the claimant called the Appeals Section after she received the hearing notice was 20 minutes after the hearing had been scheduled to start. The claimant requested 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).

Since the claimant did not read and follow the hearing instructions, she did not establish good cause to reopen the hearing. Her request to reopen the hearing 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 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).

The employer had justifiable business reasons for discharging the claimant. Based on the employer's attendance policy the claimant was excessively absent. Since she notified the employer when she was unable to work and her absences occurred when she was ill and unable to work, the record does not establish that she intentionally disregarded the employer's interests. The record does not establish that she committed work-connected misconduct. As of June 23, 2013, the claimant is qualified to receive benefits.

DECISION:

The claimant's request to reopen the hearing is denied. The representative's July 15, 2013 determination (reference 01) is reversed. The employer discharged the claimant for justifiable business reasons – she was excessively absent. The claimant's absences occurred when she was ill and unable to work. Therefore, she did not commit work-connected misconduct. As of June 23, 2013, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs