

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MAURICE JONES

Claimant

APPEAL NO: 12A-UI-03463-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LANCE PRIVATE BRANDS LLC

Employer

OC: 02/26/12

Claimant: Appellant (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's April 2, 2012 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. The claimant did not respond to the hearing notice or participate in the hearing. Karen Taylor appeared on the employer's behalf.

The claimant called the Appeals Section on April 20. He 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 concludes the claimant is not qualified to receive benefits.

ISSUES:

Did the claimant establish good cause to reopen the hearing?

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in March 2010. He worked as a full-time machine technician. On March 23, 2010, the claimant received a copy of the employer's handbook, which included the attendance policy. The employer's attendance policy informs employees that any combination of six points in a rolling six-month period will result in termination.

During his employment, the employer gave the claimant several verbal warnings for excessive absenteeism. On February 3, 2012, the claimant received a written warning for excessive absenteeism. As of February 3, the claimant had accumulated five attendance points since October 10, 2011. The claimant was late for work on February 14 and 22. He received a half point for each of these incidents. When the claimant was late on February 22, he had accumulated six attendance points since October 10, 2011. The employer discharged the claimant on February 24, 2012, for excessive absenteeism as defined by the employer's policy.

The employer responded to the hearing notice by calling the Appeals Section on April 11 and providing the phone number to contact the employer. When the claimant talked to the administrative law judge on April 20, he said he called the Appeals Section's 800 phone number twice on April 18 in the early afternoon. Both times he received a recorded message indicating the office was closed. Even though the claimant saw the warning on the hearing notice that he would not be called if he did not call the Appeals Section, he did not try to call the Appeals Section on April 19. He waited to be called for the April 19 hearing. When the claimant was not called because the administrative law judge did not have his phone number, he called the next day, April 20, at 1:30 p.m. He then 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).

If the claimant called on April 18, he called before 7:30 a.m. or after 4:30 p.m. These are the only times he would have a gotten a message that the office was closed. The Appeals Section phone system was working on April 18. The claimant acknowledged he did not try to call on April 19. The first time the claimant called and talked to anyone in the Appeals Section was April 20 at 1:30 p.m. The claimant did not establish good cause when he failed to call the Appeals Section on April 19 and then waited more than 24 hours after the hearing to call when he had not been contacted the day before for the hearing. The claimant's request to reopen the hearing is denied.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him 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 claimant knew or should have known on February 3 his job was in jeopardy because he had accumulated five attendance points since October 2011. Since the claimant's job was in jeopardy, it was his obligation to report to work on time and not violate the employer's attendance policy. The claimant was late for work on February 14 and 22, 2012. The claimant violated the employer's attendance policy by accumulating six attendance points within six months. The majority of these points occurred when the claimant reported to work late. The claimant's repeated failure to report to work on time after he was warned his job was in jeopardy amounts to an intentional disregard of the employer's interests. As of February 26, 2012, the claimant is not qualified to receive benefits.

DECISION:

The claimant's request to reopen the hearing is denied. The representative's April 2, 2012 determination (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. As of February 26, 2012, the claimant is not qualified to receive benefits. This disqualification continues he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw