

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KELLEN D WILLIAMS**  
Claimant

**APPEAL NO: 11A-UI-00738-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KIDS FIRST OF IOWA**  
Employer

**OC: 12/12/10**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's January 13, 2011 determination (reference 02) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant responded to the hearing notice, but was not available for the hearing. Jeramie Gomez, the executive director, appeared on the employer's behalf.

After the hearing had been closed and the employer had been excused from the hearing, the claimant called the Appeals Section to participate in the hearing. The claimant requested that the hearing be reopened. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUES:**

Is there good cause to reopen the hearing?

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

**FINDINGS OF FACT:**

The employer rehired the claimant on October 1, 2010. The claimant had previously worked for the employer and was considered a good employee. In October 2010, the employer rehired the claimant to work part time to provide direct care to disabled children. When the employer rehired the claimant, the claimant was asked if anything would show up in his background check. The claimant did not think anything would show up and he told the employer no.

If a charge shows up on a person's background check, the person must complete paperwork describing the event and explain what steps have been taken so there are no future problems. The background check results and the person's explanation are forwarded to the Department of Human Services. This agency then decides if the person can or cannot work for the employer.

The claimant did not report a possession of a controlled substance charge in September 2009 and possession of drug paraphernalia in November 2009, because he received a deferred

judgment and did not think these charges would show up on his background check. If nothing shows up on the background check, the Department of Human Services is not involved.

On November 22, the employer learned the Department of Human Services would not allow the claimant to work for the employer as a direct care provider. The employer then ended the claimant's employment.

After the telephone hearing had been closed and the employer had been excused, the claimant contacted the Appeals Section in response to the message left for him at the start of the hearing. When the claimant was called, he knew he was being called for the hearing, but he was talking to someone at school and thought it would be rude to take the call and participate in his unemployment insurance hearing.

#### **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). The claimant made a decision to continue his conversation instead of participating in a scheduled hearing. Unfortunately, the claimant's conversation lasted too long and by the time he called the Appeals Section for the hearing it was over. The claimant did not establish good cause to reopen the hearing because it was his responsibility to be available at the time of the scheduled hearing. Therefore, his 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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The only reason the claimant was discharged was because the Department of Human Services decided he could not work for the employer based on information discovered in his background check. Since the claimant previously worked for the employer, he knew the employer had to do background checks and if something was discovered the Department of Human Services then decided whether he continued his employment. Since the claimant received a deferred

judgment on the charges that were reported on his background check, he reasonably believed nothing would appear on his background check. The employer considered the claimant a good employee and only discharged him because the Department of Human Services told the employer the claimant could not work for the employer. Under these facts, the claimant did not commit work-connected misconduct. Therefore, as of December 12, 2010, the claimant is qualified to receive benefits.

**DECISION:**

The claimant's request to reopen the hearing is denied. The representative's January 13, 2011 determination (reference 02) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of December 12, 2010, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements.

---

Debra L. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

dlw/pjs