

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KATHRYN K SCHWANTES**

Claimant

**APPEAL NO. 06A-UI-11226-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS CORP**

Employer

**OC: 10/15/06 R: 03  
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Cargill Meat Solutions Corporation (employer) appealed a representative's November 8, 2006 decision (reference 01) that concluded Kathryn K. Schwantes (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 6, 2006. The claimant responded to the hearing notice. No one answered the phone when the administrative law judge called the claimant for the hearing. The claimant was called more than once. Katie Diercks, an assistant human resource manager, appeared on the employer's behalf

After the hearing had been closed and the employer's witness had been excused, the claimant contacted the Appeals Section. The claimant made a request to reopen the hearing. Based on the claimant's request to reopen the hearing, the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Is there good cause to reopen the hearing?

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

Has the claimant been overpaid any unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant started working for the employer on January 17, 2006. The claimant worked as a full-time production employee. The claimant received information that if an employee accumulated ten attendance occurrences, the employee would be discharged.

Prior to June 23, the employer informed the claimant she had nine attendance occurrences and if she had another unexcused absence, the employer would discharge her. The claimant did not work as scheduled on June 23, 26 and 27. On June 28, the claimant gave the employer a chiropractor's note indicating she had been unable to work June 23 through 27. The note the claimant gave the employer appeared altered. The employer contacted the chiropractor's office and asked the chiropractor to fax a copy of the original note to the employer. This statement the chiropractor's office fax indicated the claimant was only excused on June 26 and 27. The employer discharged the claimant for being dishonest by presenting the employer with an altered doctor's statement to cover her June 23 absence. The employer discharged the claimant on June 30, 2006. The claimant has not worked for another employer.

The claimant established a claim for unemployment insurance benefits during the week of October 15, 2006. The claimant filed claims for the weeks ending October 21 through December 2, 2006. The claimant received her maximum weekly benefit amount of \$199.00 for each of these weeks.

When the claimant was called for the hearing on December 6, no one answered the phone. Prior to the hearing, the claimant received information that if she had not received a call by 9:05 a.m. on December 6, she needed to call the Appeals Section again. On December 6, the claimant did not realize it was 9:12 a.m. and she had not received a call to participate in a hearing. By the time the claimant contacted the Appeals Section at 9:15 p.m., the hearing was closed and the employer was no longer on the phone. The claimant requested that the hearing be reopened.

The claimant asserted she had been sitting by her phone and her phone did not ring. The claimant verified that the correct phone number had been called. The claimant suggested that because her phone was cordless, the phone did not ring when she had been called.

#### **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 request to reopen the hearing because she asserted she had not been called for the hearing, or at least her phone did not ring. If the claimant's phone did not ring because it is a cordless phone, the claimant is responsible for making sure the phone number she provided to the Appeals Section is in good working order. Even though the claimant received information she was to call the Appeals Section again if she did not get a call by 9:05 a.m., she did not do this. Based on the ultimate reasons for the claimant's employment separation, the evidence indicates the claimant has a tendency to be less than truthful. The claimant's request to reopen the hearing is denied because the correct number was called and the claimant was not available to participate at the time of the scheduled hearing.

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. 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 claimant gave the employer an altered chiropractor's statement on June 28, 2006. Even though the chiropractor only excused her from work on June 26 and 27, the claimant, or someone on her behalf, changed the statement so that her June 23 absence was also covered by the chiropractor's statement. The claimant knew if she did not have a medical excuse for the June 23 absence she would be discharged. The claimant committed work-connected misconduct when she submitted the altered statement to the employer on June 28, 2006. As of October 15, 2006, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending October 21 through December 2, 2006. The claimant has been overpaid \$1,393.00 in benefits she received for these weeks.

**DECISION:**

The claimant's request to reopen the hearing is denied. The representative's November 8, 2006 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of October 15, 2006. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending October 21 through December 2, 2006. The claimant has been overpaid and must repay a total of \$1,393.00 in benefits she received for these weeks.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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