

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES N GACHII
Claimant

APPEAL NO. 13A-UI-10684-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEVELOPMENTAL SERVICES OF IOWA
Employer

OC: 08/11/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

James Gachii filed an appeal from an unemployment insurance decision dated September 12, 2013, reference 02, that concluded the claimant was ineligible to receive unemployment insurance benefits. A telephone hearing was scheduled for October 14, 2013. The claimant, the appellant herein, did not respond to the notice of hearing. Although duly notified, the employer did not respond to the notice of hearing. This decision is based upon the contents of the administrative file.

ISSUE:

At issue in this matter is whether the decision previously entered should be affirmed.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The appellant failed to provide a telephone number at which he could be reached for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

James Gachii was employed by Developmental Services of Iowa from July 27, 2012 until July 22, 2013 when he was discharged from employment. The claimant held the position of full-time direct support professional. The claimant was discharged for repeated failure to follow company procedures by not documenting T-logs, documenting medications and making entries at the end of each shift as to what happened with each person under his care. The claimant had been warned and was discharged after he continued to fail to document the dispensing of medication after being warned.

The administrative law judge has conducted a careful review of the administrative file to determine whether the unemployment insurance decision should be affirmed.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 26.8(3), (4) and (5) provide:

Withdrawals and postponements.

(3) If, due to emergency or other good cause, a party, having received due notice, is unable to attend a hearing or request postponement within the prescribed time, the presiding officer may, if no decision has been issued, reopen the record and, with notice to all parties, schedule another hearing. If a decision has been issued, the decision may be vacated upon the presiding officer's own motion or at the request of a party within 15 days after the mailing date of the decision and in the absence of an appeal to the employment appeal board of the department of inspections and appeals. If a decision is vacated, notice shall be given to all parties of a new hearing to be held and decided by another presiding officer. Once a decision has become final as provided by statute, the presiding officer has no jurisdiction to reopen the record or vacate the decision.

(4) A request to reopen a record or vacate a decision may be heard ex parte by the presiding officer. The granting or denial of such a request may be used as a grounds for appeal to the employment appeal board of the department of inspections and appeals upon the issuance of the presiding officer's final decision in the case.

(5) If good cause for postponement or reopening has not been shown, the presiding officer shall make a decision based upon whatever evidence is properly in the record.

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.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or

incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The administrative law judge has carefully reviewed the evidence in the administrative file and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed.

The claimant was discharged after repeatedly violating a known company rule after warning. The claimant was aware of his responsibility to document medication and other factors regarding patient care but did not do so after being adequately warned by the employer.

Pursuant to the rule, the appellant must make a written request to the administrative law judge that the hearing be reopened within 15 days after the mailing date of this decision. The written request should be mailed to the administrative law judge at the address listed at the beginning of this decision and must explain the emergency or other good cause that prevented the appellant from participating in the hearing at its scheduled time.

DECISION:

The unemployment insurance decision dated September 12, 2013, reference 02, is affirmed. The decision disqualifying the claimant from receiving benefits remains in effect. The decision will become final unless and appeal is filed with the Employment Appeal Board within 15 days of the date of this decision.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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