

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANTHONY L PETTY**  
Claimant

**APPEAL NO. 13A-UI-03621-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EXPRESS SERVICES INC**  
Employer

**OC: 02/24/13**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated March 22, 2013, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 26, 2013. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Mike Schaul participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. The claimant worked for the employer on an assignment at Fluid Services from December 10, 2012, to February 22, 2013.

The claimant was terminated from his assignment at Fluid Services due to lack of performance.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

The claimant called the Appeals Bureau at 1:36 p.m. and explained that he was helping his grandmother move her refrigerator and forgot about the hearing.

**REASONING AND CONCLUSIONS OF LAW:**

The first issue is whether the claimant has shown good cause to reopen the hearing under 871 IAC 26.8(3). Forgetting a hearing does not provide good cause to reopen it.

The next issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. He was not.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

No willful and substantial misconduct has been proven in this case. The employer stated the claimant had declined offers of work, but this was not an issue noted for the hearing. If the employer wishes to raise this issue, it should contact the agency with details regarding any alleged work refusals.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account may be chargeable for benefits paid to the claimant based on this separation from employment.

**DECISION:**

The unemployment insurance decision dated March 22, 2013, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs