

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSE A ABREU**

Claimant

**APPEAL NO: 09A-UI-07361-DW**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE UNIVERSITY OF IOWA**

Employer

**OC: 04/12/09**

**Claimant: Appellant (1)**

Section 96.5-1 - Voluntary Quit

**STATEMENT OF THE CASE:**

Jose A. Abreu (claimant) appealed a representative's May 8, 2009 decision (reference 01) that concluded he was not qualified to receive benefits, and the account of The University of Iowa (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on July 14, 2009, in Cedar Rapids. The claimant was not present for the hearing. David Bergeon and Kate Trump appeared on the employer's behalf. During the hearing, Employer Exhibit One, the March 23, 2009 termination letter, was offered and admitted as evidence.

After the hearing had been closed, the employer had been excused and had left; the claimant appeared for the hearing. The claimant requested that the hearing be reopened. 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:**

Did the claimant establish good cause to reopen the hearing?

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

**FINDINGS OF FACT:**

The claimant started working for the employer on November 7, 1994. The claimant worked as a full-time research assistant II. At the time of hire, the employer informed the claimant he was to call or email his immediate supervisor when he was unable to work as scheduled. On August 15, 2008, the employer clarified the employer's attendance policy with the claimant.

On March 11, 2009, the lab manager talked to the claimant and warned him that it was unacceptable behavior when he had not reported to work or asked his supervisor for time on March 4, and then did not report to work or notify the employer he would not be at work on March 5 and 6. Although the lab manager asked the claimant to stay and complete unfinished

job tasks, the claimant left work on March 11. On March 12, 13 and 16, the claimant did not report to work but called on Monday, March 16, to report he was taking vacation these days. (Employer Exhibit One.)

Dr. Ahrens, the claimant's supervisor talked to the claimant on March 17. Dr. Ahrens told the claimant on March 17 it was unacceptable for the claimant to take several vacation days that had not been approved by Ahrens. Dr. Ahrens gave the claimant authorization to take March 25 through 27 off as vacation days. Dr. Ahrens then asked the claimant to complete various tasks that day. Since the claimant indicated he had some late morning appointments, Dr. Ahrens told the claimant to return to work that afternoon and complete the lab assignments. The claimant did not return to work the afternoon of March 17. (Employer Exhibit One.)

On March 18, 19 and 20, the claimant was scheduled to work. He did not report to work or notify the employer he was unable to work these days. Dr. Ahrens had not given the claimant permission to take these days off from work. On March 23, the employer sent the claimant a letter informing him his employment had been terminated because he had not reported to work or called the employer on March 18, 19 and 20. (Employer Exhibit One.) The claimant did not respond to the March 23 letter or contact the employer anytime after March 17, 2009.

The claimant requested an in-person hearing which was scheduled on July 14 at 10:00 a.m. The claimant was not present at 10:00 a.m. when the hearing began. After the hearing had been closed, the employer's witnesses had been excused and were no longer present; the claimant appeared for the hearing at 10:15 a.m. The claimant was late because he drove from Iowa City and miscalculated how long it would take to get from Iowa City to Cedar Rapids. The claimant 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).

The claimant intended to participate in the hearing. Unfortunately, miscalculating the time it took to drive to Cedar Rapids does not establish good cause to reopen the hearing. Therefore, 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. 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 evidence indicates the claimant understood when he was unable to work as scheduled, the employer required him to notify the employer. The employer clarified this policy in mid-August

2008 and the lab manager warned the claimant on March 10, 2009, that the claimant's failure to report to work on March 5 and 6 without calling in was unacceptable behavior. Even after his supervisor talked to the claimant on March 17 and gave the claimant time off on March 25 to 27, the claimant failed to report to work as scheduled or notify the employer on March 18, 19 and 20 that he would not be at work. The claimant's failure to call or report to work on March 18, 19 and 20 amounts to an intentional and substantial disregard of the employer's interests. The claimant committed work-connected misconduct. Therefore, as of April 12, 2009, the claimant is not qualified to receive benefits.

**DECISION:**

The claimant's request to reopen the hearing is denied. The representative's May 8, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of April 12, 2009. This disqualification continues until 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.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css