

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANE M KEARNS

Claimant

HCM INC

Employer

APPEAL NO: 09A-UI-14655-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/16/09

Claimant: Appellant (1)

Section 96.5-2-a – Discharge
Section 17A.12(3) – Default
871 IAC 26.8(2) – Postponement

STATEMENT OF THE CASE:

The claimant appealed a department decision dated September 18, 2009, reference 01, that held she was discharged for misconduct on August 14, 2009, and benefits are denied. A telephone hearing was scheduled for October 30, 2009. The claimant did not participate. Jeff Wollum, Administrator, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having considered the evidence in the record, finds: The claimant failed to make herself available when called for the hearing at the telephone number she requested to be contacted for the hearing. The employer moved to default the claimant for her failure to appear, and the motion was granted.

On October 28, two days prior to the hearing, the claimant requested to postpone the hearing due to a work schedule conflict. The request was denied, and the claimant was advised to provide another phone number, if she could make an arrangement at work to participate.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 26.8(2) provides:

(2) A hearing may be postponed by the presiding officer for good cause, either upon the presiding officer's own motion or upon the request of any party in interest. A party's request for postponement may be in writing or oral, provided the oral request is tape-recorded by the presiding officer, and is made not less than three days prior to the scheduled hearing. A party shall not be granted more than one postponement except in the case of an extreme emergency.

The claimant failed to make a timely request (three days) for postponement, and the reason offered is not considered an emergency or similar good cause.

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.

The administrative law judge concludes the employer motion to default that was granted due to the failure of the claimant to appear (respond to the hearing notice) for the hearing establishes that claimant was discharged for misconduct on August 14, 2009.

The claimant appealed the department decision, but failed to appear for the hearing to contest the discharge. The claimant is defaulted pursuant to Iowa Code section 17A.12(3), and the department decision remains in force and effect.

DECISION:

The department decision dated September 18, 2009, reference 01, is affirmed. The claimant was discharged for misconduct on August 14, 2009. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs