

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEANETTE M SEYMOUR

Claimant

APPEAL NO: 14A-UI-04619-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PIONEER HI-BRED INTERNATIONAL INC

Employer

OC: 03/30/14

Claimant: Respondent (2)

Section 96.5-2-a – Discharge
871 IAC 26.14(7) – Late Call

STATEMENT OF THE CASE:

Pioneer Hi-Bred International, Inc. (employer) appealed a representative's April 24, 2014 (reference 02) decision that concluded Jeanette M. Seymour (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 5, 2014. The claimant received the hearing notice and responded by calling the Appeals Bureau on May 16, 2014. She indicated that she would be available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, the claimant was not available; therefore, she did not participate in the hearing. Kent Berte appeared on the employer's behalf. The record was closed at 1:20 p.m. At 3:37 p.m., the claimant called the Appeals Section and requested that the record be reopened. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Should the hearing record be reopened? Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The claimant received the hearing notice prior to the June 5, 2014 hearing. The instructions inform the parties that they are to be available at the specified time for the hearing, and that if they cannot be reached at the time of the hearing at the number they provided, the judge may decide the case on the basis of other available evidence. The claimant failed to be available at the scheduled day and time set for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. The reason the claimant was unavailable was on the day of the hearing she had forgotten about the hearing and agreed to stay on at her current job later than her scheduled 1:00 p.m. end of shift.

The claimant started working for the employer on May 20, 2013. She worked full time as a temporary seasonal research worker at the employer's Algona, Iowa facility. Her position was supposed to go through about December 13, 2013, but no definite decision had been made prior to her last day as to when the position otherwise was to end. However, her last day of work was October 11, 2013. The employer discharged her on October 21, 2013. The reason asserted for the discharge was excessive absenteeism.

The claimant had missed periods of several days at a time with little explanation in both August and September. On September 24 her supervisor, Berte, verbally warned her that this was unacceptable. Then from October 12 through October 21 the claimant was a no-call/no-show for work. On October 21 Berte called the claimant and informed her that the employment was ended.

The claimant established a claim for unemployment insurance benefits effective March 30, 2014. The claimant has received no unemployment insurance benefits since the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant's request to reopen the hearing should be granted or denied. After a hearing record has been closed the administrative law judge may not take evidence from a non-participating party but can only reopen the record and issue a new notice of hearing if the non-participating party has demonstrated good cause for the party's failure to participate. Rule 871 IAC 26.14(7)b. The record shall not be reopened if the administrative law judge does not find good cause for the party's late contact. *Id.* Failing to read or follow the instructions on the notice of hearing are not good cause for reopening the record. Rule 871 IAC 26.14(7)c.

The claimant was not available for the hearing on June 5 until over two and a half hours after the scheduled time for the hearing. Although the claimant intended to participate in the hearing, she failed to read or follow the hearing notice instructions to be available at the scheduled time for to the hearing. 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. The claimant did 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 has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

Excessive unexcused absenteeism can constitute misconduct. Rule 871 IAC 24.32(7). The claimant's final absences were not excused and were not shown to be due to properly reported illness or other reasonable grounds. The claimant had previously been warned that future absences could result in termination. *Higgins v. IDJS*, 350 N.W.2d 187 (Iowa 1984). The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's April 24, 2014 (reference 02) decision is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of October 11, 2013. 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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