

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DERRICK F BOCKENSTEDT
Claimant

APPEAL NO. 09A-UI-14957-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED PARCEL SERVICE
Employer

**Original Claim: 04/26/09
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge
Section 17A.12(3) – Default
871 IAC 26.14(7) – Late Call

STATEMENT OF THE CASE:

The employer appealed a department decision dated September 24, 2009, reference 01, that held the claimant was not discharged for misconduct on August 27, 2009, and that allowed benefits. A telephone hearing was held on November 4, 2009. The claimant participated. The employer did not participate.

ISSUES:

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

Whether the record should have been re-opened.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: The employer representative and designated witness were not available when called for the hearing. The designated witness, Center Manager Eric Griffin, is on vacation. On-car Supervisor Rob Fiebelkorn declined to participate. The claimant moved to default the employer for its failure to appear/participate, and the motion was granted.

Representative Laura McFadden called in ten minutes after the scheduled time for the hearing, stating she was on another call when called at 3:02 p.m. for the hearing and the call was transferred to voice messaging.

REASONING AND CONCLUSIONS OF LAW:

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 failure of the employer to participate upon granting the motion to default means that it has failed to establish that the claimant was discharged for misconduct in connection with employment on August 27, 2009.

871 IAC 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

At issue is a request to reopen the record made after the hearing had concluded. The request to reopen the record is denied because the party making the request failed to participate by reading and following the instructions on the hearing notice.

The employer representative failed to offer a good cause to reopen the record based on a late call for the hearing after the close of the record. Participants are expected to be available when called for the hearing, and being on another call is not a good cause when the hearing is set for 3:00 p.m. and the person is on another call at 3:02. In addition, the employer representative was unaware that her designated witness was on vacation and that there was no other employer witness at the center who could participate for the employer.

DECISION:

The department decision dated September 24, 2009, reference 01, is affirmed. The claimant was discharged for misconduct on August 27, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw