

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBERT C MOORE**  
Claimant

**APPEAL NO: 10A-UI-16271-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SAC & FOX TRIBE**  
Employer

**OC: 09/19/10  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Robert C. Moore (claimant) appealed a representative's November 23, 2010 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Sac & Fox Tribe / Meskwaki Bingo, Casino & Hotel (employer). Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held at 9:00 a.m. on January 14, 2011. The claimant failed to respond to the hearing notice and provide a telephone number at which a witness could be reached for the hearing and did not participate in the hearing. The administrative law judge considered the record closed at 9:10 a.m. At 11:12 a.m., the claimant called the Appeals Section and requested that the record be reopened. Based on a review of the available information 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 claimant received the hearing notice prior to the January 14, 2011 hearing. The instructions inform the parties that if the party does not contact the Appeals Section and provide the phone number at which the party can be contacted for the hearing, the party will not be called for the hearing. The first time the claimant directly contacted the Appeals Section was on January 14, 2011 over two hours after the scheduled start time for the hearing. The claimant had not read all the information on the hearing notice, and had assumed that the Appeals Section would initiate the telephone contact even without a response to the hearing notice because he had contacted his local Agency office to update his address and telephone number information; Agency records indicate he made those modifications with his local Agency office on or about December 21, 2010.

The claimant started working for the employer on June 11, 2008. He worked full time as a casino housekeeping porter. His last day of work was September 21, 2010. The employer discharged him on that date. The stated reason for the discharge was repeated insubordination.

The claimant had been given multiple verbal and written warnings in 2010 prior to September 16, 2010, including two suspensions for insubordination on April 25, 2010 and May 11, 2010, and additional warning for yelling and displaying inappropriate behavior on July 26, 2010. On September 16 the claimant had a further incident in which he was shouting at a manager and another employee who were in the employee break room where he was cleaning. As a result of this final incident, and given the prior warnings, the employer determined to discharge the claimant on September 21.

### **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. 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. 871 IAC 26.14(7)c.

The first time the claimant called the Appeals Section for the January 14, 2011 hearing was after the hearing had been closed. Although the claimant intended to participate in the hearing, the claimant failed to read or follow the hearing notice instructions and did not contact the Appeals Section prior 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. 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. 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's repeated inappropriate behavior and insubordination after prior warnings shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

**DECISION:**

The representative's November 23, 2010 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of September 21, 2010. This disqualification continues until the claimant 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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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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