IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

DANIEL T RIEF
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COUNCIL BLUFFS IA 51503

PLUMROSE USA INC
C/O ADP/TALX
PO BOX 66744
ST LOUIS MO 63166 -6847

Appeal Number: 05A-UI-03752-DWT
OC: 02/27/05 R: 01
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Plumrose USA, Inc. (employer) appealed a representative's March 24, 2005 decision (reference 01) that concluded Daniel T. Rief (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 29, 2005. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. The employer responded to the hearing notice but was not available for the hearing. The employer contacted the Appeals Section at 8:26 a.m. The employer requested that the hearing be reopened. Based on the administrative record, the employer's request to reopen the hearing and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is there 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 September 17, 2004. The claimant worked second and third shifts in ham production. At the time of hire, the claimant received a copy of the employer's drug and alcohol policy.

On February 15, 2005, the claimant was chosen randomly to submit to a drug test. The claimant went to Mercy Hospital in Council Bluffs for the test. The claimant drank a great deal of water that night even when he was at the hospital. Although the specimen temperature was all right and the laboratory decided the sample was negative, the sample was also considered dilute.

On February 18, 2005, the employer discharged the claimant. The employer considered a dilute specimen a failed test. Pursuant to the employer's policy, the employer concluded the claimant violated the employer's drug policy on February 15, 2005.

Although the employer responded to the hearing notice, the employer's witness was not available for the hearing. The employer's unemployment insurance representative failed to explain the importance of being available for the hearing at the scheduled time. The employer's witness was involved in other business concerns and was not available until 8:25 a.m. The employer contacted the Appeals Section when the employer's witness was available and 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 employer knew the hearing was scheduled at 8:00 a.m. but was not available for the hearing. While the administrative law judge understands the employer's witness is responsible for many employees, the business matter the employer addressed at 8:00 a.m. was not an emergency situation. Instead, the employer's unemployment insurance representative failed to stress the importance of being available at the time of the hearing. While the employer provided a legitimate excuse for not being available until 8:25 a.m., the primary occurred as the result of communication problems between the employer and its unemployment insurance representative. Good cause for unemployment insurance purposes has not been established. Therefore, the employer'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. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

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 record reveals that based on its policy the employer had business reasons for discharging the claimant. The record, however, indicates there may have been a reasonable explanation for the claimant's dilute sample. As a result, the record does not establish that the claimant intentionally violated the employer's policy and did not commit work-connected misconduct. As of February 27, 2005, the claimant is not disqualified from receiving unemployment insurance benefits.

DECISION:

The employer's request to reopen the hearing is denied. The representative's March 24, 2005 decision (reference 01) is affirmed. The employer had business reasons for discharging the claimant. The record does not establish that the claimant committed work-connected misconduct. Therefore, as of February 27, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant. The maximum amount the employer's account could be charged during this benefit year is $19.63.

dlw/pjs