

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**OLIVER D WASHINGTON**  
Claimant

**APPEAL NO: 12A-UI-14160-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WATERLOO COMMUNITY SCHOOL DIST**  
Employer

**OC: 10/28/12**  
**Claimant: Appellant (1)**

Iowa Code Section 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's November 28, 2012 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The record did not indicate the claimant responded to the hearing notice. Therefore, he was not called for the hearing. Mickey Waschkat, Juliet Dunn and Marty Metcalf appeared on the employer's behalf.

After the hearing had been closed and the employer had been excused, the claimant called the Appeals Section to participate in the hearing. He requested that the hearing be reopened. Based on the claimant's statement to reopen the hearing, the administrative record, and the law, the administrative law judge concludes the claimant did not establish good cause to reopen the hearing and his request is denied. Also, the administrative law judge concludes that the claimant is not qualified to receive benefits.

**ISSUES:**

Did the claimant establish good cause to reopen the hearing?

Did the employer discharge him for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in March 2012. He worked as an on-call substitute custodian.

In late August, the employer talked to the claimant about an incident between himself and another co-worker. At that time the employer talked to the claimant and told him he should not challenge people. Instead of getting upset, the employer advised the claimant to walk away from a confrontation and not say anything to the other person.

When the claimant was working on October 23, a high school male recognized him. This student was the boyfriend of a relative's daughter. Later during the day when the claimant was in the lunchroom, this same student walked by the claimant and asked the claimant what he

was looking at. The claimant asked who the student was talking to. The student initially did not say anything but kept walking back and forth. A verbal exchange between the claimant and student led to a verbal confrontation where they exchanged angry words with one another.

On November 1, 2012, the employer told the claimant his name would be removed from the substitute custodial list because of his inappropriate interaction with a student on October 23.

Hearing notices were mailed on December 6 and 24. The hearing notice instructed the parties to contact the Appeals Section immediately after receiving the hearing notice to provide the phone number the party could be contacted at to participate in the hearing. At the scheduled hearing time, 1 p.m., there was no indication the claimant had contacted the Appeals Section and provided the phone number to call him for the hearing prior to the hearing.

At 1:25 p.m., the administrative law judge received a message the claimant had called in late for the hearing. The administrative law judge talked to the claimant and learned he did not have a control number. Since the claimant asserted he called and provided his phone number before the scheduled hearing, all clerical staff were asked to review their telephone logs to see if they had a record of the claimant calling the Appeals Section before January 3. Everyone reviewed their log books and no one had a record of the claimant calling before the hearing.

The claimant initially indicated he waited until about 1:20 p.m. to call the Appeals Section for his hearing in case the hearing started late. After he was told that parties were not told to wait 20 minutes before they called, he changed the time he called in.

#### **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 claimant's assertion that he called before the scheduled January 3 hearing is not credible. This conclusion is based on the fact the claimant did not have a control number, none of the Appeals clerical staff had a record of the claimant calling, he was evasive when asked what someone told him to do when he allegedly called in his phone number before January 3 and he changed the time he called the Appeals Section on January 3. Although, the claimant wanted to participate in his appeal, he failed to read and follow the hearing instructions. He did not establish good cause to reopen the hearing. His 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 law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

Before the October 23 incident, the employer advised the claimant to walk away from confrontational or challenging situations. On October 23, the claimant did not walk away from a situation involving a student. The claimant engaged in a heated verbal confrontation with a high school student. The claimant's comment to a fact finder that he was not going to let people walk over him indicates that he was unable to follow the employer's earlier direction to walk away from challenging situations and not say anything. By interacting with the student, the claimant escalated the situation. The claimant's conduct on October 23 amounts to an intentional and substantial disregard of the standard of behavior the employer had a right to expect from him. The employer discharged the claimant for reasons constituting work-connected misconduct. As of October 28, 2012, the claimant is not qualified to receive benefits.

**DECISION:**

The claimant's request to reopen the hearing is denied. The representative's November 28, 2012 determination (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of October 28, 2012. This disqualification continues until he 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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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs