

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JASON S PAXSTON**  
Claimant

**APPEAL NO: 12A-UI-03840-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HARSCO CORP**  
Employer

**OC: 02/19/12**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2) a- Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's April 2, 2012 determination (reference 02) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant responded to the hearing notice by calling the Appeals Section before the hearing and providing the phone number to contact him for the hearing. The claimant was called for the hearing, but he did not answer his phone. A message was left for the claimant to contact the Appeals Section immediately. Chris Welch appeared on the employer's behalf.

The claimant called about noon for the 9:30 a.m. hearing. The claimant requested that the hearing be reopened. Based on the claimant's request to reopen the hearing, the administrative record and the law, the administrative law judge concludes 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 September 2007. He worked full time as a heavy equipment operator. The employer's policy informs employees that the employer does not tolerate sleeping or the appearance that an employee is sleeping while at work. The employer also prohibits employees from using cell phones on company property except during an authorized break.

The employer suspended the claimant on February 15, 2012, for three days because he had been observed sleeping while on the slag pot carrier. On February 21, 2012, the employer discharged the claimant for sleeping on the job and using his cell phone on company property when he was not on an authorized break.

After hearing notices were mailed to the parties, the claimant followed the hearing notice instructions and provided the phone number to call him for the April 30 phone hearing. When the claimant was called for the 9:30 a.m. hearing, he was in safety training for a new job. The claimant forgot about the hearing after he started a new job and did not think to contact the Appeals Section to reschedule the hearing. At noon when the claimant noticed he had a voice message, he returned the administrative law judge's call. The employer had been excused and the hearing was closed by the time the claimant called the Appeals Section on April 30. The claimant asked 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).

Even though the claimant wanted to and planned to participate in the hearing, he forgot about the hearing on April 30 when he went to a safety training session for a new job. While it is understandable why the claimant was excited about his new job, he did not establish good cause to reopen the hearing. His request 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. 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).

After the employer suspended the claimant on February 15 for sleeping on a slag pot carrier, he knew or should have known his job was jeopardy. The record indicates the employer discharged the claimant on February 21 after an employee reported observing the claimant sleeping at work and for using his cell phone on the employer's property when he was not on an authorized break. The employer discharged the claimant for reasons constituting work-connected misconduct. As of February 19, 2012, the claimant is not qualified to receive benefits.

**DECISION:**

The claimant's request to reopen the hearing is denied. The representative's April 2, 2012 determination (reference 02) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of February 19, 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/css