IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

NASRA M HAGI
Claimant

BURGER KING
Employer

APPEAL NO. 06A-UI-09779-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09/10/06 R: 03
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Nasra M. Hagi (claimant) appealed a representative's October 3, 2006 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Burger King (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 18, 2006. 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 she could be contacted to participate in the hearing. As a result, no one represented the claimant. Kathy Frerichs, the controller, appeared on the employer's behalf.

At 2:00 p.m., after the hearing had been closed and the employer had been excused, the claimant called the Appeals Section for the scheduled noon hearing. The claimant made a request to reopen the hearing. Based on the claimant's request, the evidence, the arguments of the parties, 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 April 3, 2006. The employer hired the claimant to work as a part-time crew employee.

On May 24, the claimant was scheduled to work at 7:00 a.m. The claimant called at 8:30 a.m. and asked what time she was scheduled to work that day. The claimant did not get to work until around 10:30 a.m. As a result of the May 24 incident, the employer gave the claimant a written warning on May 31. The employer warned the claimant that it was her responsibility to find out

when she was scheduled and find reliable transportation or take public transportation to work because the employer expected the claimant to work as scheduled.

Between May 31 and June 18, the claimant called the employer at various time to let the employer know she was unable to work as scheduled. On June 18, the employer made sure the claimant had no problems working a shift before scheduling her that day. Prior to June 18, the claimant verified she could work this date. On June 18, the claimant called to let the employer know she could not work as scheduled. The employer then discharged the claimant because the claimant repeatedly notified the employer she could not work as scheduled.

Hearing notices were mailed to the parties on October 9. The claimant received the notice prior to the October 18 scheduled hearing. She was taking a class at the time of the hearing and received permission from her teacher to leave the class when she received the call on her cell phone. Even though the claimant made the arrangement with her teacher, she did not read or follow the directions on the hearing notice about contacting the Appeals Section prior to the hearing to provide the phone number at which to contact her for the hearing. When the claimant did not receive a call for the noon hearing, she contacted her local Workforce office. The claimant then contacted the Appeals Section at 2:00 p.m. on October 18. By the time the claimant called, the hearing had been closed and the employer's witness had been excused. The claimant 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 claimant failed to read and/or follow the instructions on the hearing notice. Therefore, she did not establish good cause to reopen the hearing.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code section 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 employer established compelling business reasons for discharging the claimant. Even though the employer gave the claimant a written warning on May 31 and the claimant agreed to work on June 18, the fact she called on June 18 to notify the employer she was unable to work does not establish work-connected misconduct. Even though the employer's witness was told the claimant received several verbal warnings between May 31 and June 18 about calling to report she was unable to work as scheduled, without specific information the evidence does not establish that the claimant committed work-connected misconduct. The employer's witness only knew what had been reported to her by the claimant's immediate supervisors. Therefore, as of September 10, 2006, the claimant is qualified to receive unemployment insurance benefits.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

DECISION:

The claimant's request to reopen the hearing is denied. The representative's October 3, 2006 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of September 10, 2006, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account will not be charged during the claimant's current benefit year.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs