

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICK L SUNDERBRUCH
Claimant

APPEAL NO: 09A-UI-19446-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADECCO USA INC
Employer

OC: 10/25/09
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's December 16, 2009 decision (reference 01) that concluded the claimant was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. A telephone hearing was held on February 8, 2010. The claimant responded to the hearing notice, but was not available for the hearing. Tom Kuiper, a representative with UC Express, represented the employer. Deanna Dunn, the branch manager, testified on the employer's behalf.

After the hearing had been closed and the employer had been excused, the claimant contacted the Appeals Section. He requested that the hearing be reopened. Based on the claimant's request to reopen the hearing, 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 employer is a temporary staffing firm. The claimant registered to work for the employer's clients on March 4, 2009. The claimant was assigned to work at Wells Fargo on March 30, 2009.

While the claimant was at Wells Fargo, he grew frustrated because he was not doing the work he had accepted. The work he was doing was a precursor to the work he had agreed to do. In late October, the claimant interviewed with Wells Fargo personnel for a full time job at Wells Fargo. During the interview, the claimant was very candid about the work he had been doing. He verbalized his frustration and made a comment about doing monkey work.

Shortly after the interview, the claimant asked his supervisor if he had been hired. The supervisor checked and learned he had not been hired because of his outburst during the interview. Wells Fargo asked that the claimant be removed from the job assignment.

After learning his assignment at Wells Fargo was over as of October 30, 2009, the claimant asked the employer about another assignment. The employer considered the claimant eligible for another assignment but did not have any work to assign to him. The claimant has not kept in contact with the employer about another job assignment.

The claimant received the hearing notice and called in prior to the hearing to provide the phone number to contact him for the hearing. The claimant was called for the 10:00 a.m. hearing, but he was not available for the hearing. The claimant took his grandmother to a 9:15 a.m. doctor's appointment when her pre-arranged ride could not take her at the last minute. The appointment took longer than the claimant anticipated. When the appointment was over, the claimant noticed he had missed a call. The claimant called the Appeals Section at 10:30 a.m. 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).

While the claimant is commended for taking his grandmother to a scheduled doctor's appointment, he forgot about his 10:00 a.m. scheduled hearing. If he had remembered, he could have either called to request a continuance or he could have gone somewhere to make sure he received the 10:00 a.m. call. The claimant did not establish good cause to reopen the hearing, and 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 section 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).

The client, Wells Fargo, asked that the claimant be removed from the assignment after he candidly expressed his feeling about his job during an interview with Wells Fargo to be hired as a full-time employee. Even though this client no longer wanted the claimant, the employer still considered the claimant eligible to be assigned to another job. The claimant used poor judgment when he explained how he felt about the job while interviewing for a full-time job with Wells Fargo. The claimant may have been frustrated with the work he had been doing, but his characterization of the job as monkey work was not appreciated by the Wells Fargo interviewer. Even though the claimant used poor judgment, he did not commit work-connected misconduct.

Also, the claimant immediately asked about another job assignment, but the employer did not have another job to assign to him.

The fact the claimant has not kept in regular contact with the employer does not change the fact his October 30 employment separation was for nondisqualifying reasons. After the claimant established a claim for benefits, the law does require him to keep in regular contact with the employer. He must however, make an active search for work. This may include contacting the employer for work, but he is not required to contact the employer. Since the claimant was not discharged from his job assignment for work-connected misconduct and he did not quit, his October 30, 2009 employment separation does not disqualify him from receiving benefits.

DECISION:

The claimant's request to reopen the hearing is denied. The representative's December 16, 2009 decision (reference 01) is affirmed. The claimant did not commit work-connected misconduct and he did not quit his employment. Therefore, as of October 25, 2009, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs