

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EUNICE P RENDON
Claimant

APPEAL NO: 11A-UI-10830-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HCM INC
Employer

**OC: 07/17/11
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's August 8, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant responded to the hearing notice, but was not available for the hearing. Diane Schaffner, the administrator since January 19, 2011, appeared on the employer's behalf.

After the hearing had been closed the employer's witness excused, the claimant contacted the Appeals Section and requested that the hearing be reopened. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUES:

Is the good cause to reopen the hearing?

Did the employer discharge the claimant for reasons that constitute work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in December 2010. She worked as a full-time CNA. The employer's policy informs employees that if they receive a fourth written warning for any combination of problems, the employer discharges the employee.

During the claimant's employment, she received the following written warnings. On January 13, she received a written warning for failing to follow a charge nurse's directions. On July 2, she received a written warning for failing to reposition a resident every two hours. On July 3, the claimant received a written warning for making up a bed that had dirty linen. On July 6, the charge nurse considered the claimant to have talked sarcastically to a resident by the way she said the resident's name. The claimant received her fourth written warning for talking to a resident rudely. Since this was the claimant's fourth written warning, the employer discharged her on July 6, 2011.

The claimant received the hearing notice and had called the Appeals Section before the hearing about rescheduling the hearing. After talking to the administrative law judge about rescheduling the hearing, the claimant made arrangements to take off some time work and participate at the scheduled hearing on September 9. The claimant, however, thought the hearing was at 11:00 a.m., when it was instead scheduled at 10:00 a.m. The claimant called the Appeals Section at 10:40 a.m. or after the hearing had been closed and Schaffner had been excused. She 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 made arrangements to participate at the scheduled hearing on September 9, but got the time mixed up. She thought the hearing was at 11:00 a.m. when the hearing notice indicated the hearing was at 10:00 a.m. Even though the claimant made an honest mistake, she did not establish good cause to reopen the hearing. Her request is denied.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her 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 employer established business reasons for discharging the claimant. Since the claimant received warnings for different problems, the facts do not establish that she intentionally disregarded the employer's interests. The evidence does not establish that the claimant committed work-connected misconduct. As of July 17, 2011, the claimant is qualified to receive benefits.

DECISION:

The claimant's request to reopen the hearing is denied. The representative's August 8, 2011 determination (reference 01) is affirmed. The employer discharged the claimant for business

reasons, but the evidence did not establish that the claimant committed work-connected misconduct. As of July 17, 2011, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css