

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CODY A KELLER
Claimant

APPEAL NO: 07A-UI-08685-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AEC ENTERPRISES INC
Employer

OC: 08/12/07 R: 03
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

AEC Enterprises, Inc. (employer) appealed a representative's September 11, 2007 decision (reference 01) that concluded Cody A. Keller (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 26, 2007. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's representative/witness could be contacted to participate in the hearing. As a result, no one represented the employer.

After the hearing had been closed and the claimant had been excused, the employer contacted the Appeals Section. The employer made a request to reopen the hearing. Based on the employer's request to reopen the hearing, the administrative record, 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 in January 2007. The claimant worked as a full-time production worker. On August 3, 2007, the employer gave the claimant a written warning for attendance problems. The claimant's attendance was 93.5 percent and the employer required him to have his attendance at 95 percent. The employer warned the claimant on August 3 that his job was in jeopardy if he did not improve his attendance.

The claimant did not report to work or call the employer on August 6. On August 14, the claimant notified the employer that he was unable to work because of back problems. The

claimant went to his doctor on August 14. The claimant gave the employer his doctor's statement on August 15 verifying he had been unable to work on August 14, 2007. As a result of both the August 6 and 14 absences, the claimant's attendance was 92.19 percent as of August 15. The employer discharged the claimant for violating the employer's attendance policy.

The employer received the hearing notice prior to the scheduled September 26 hearing. The employer intended to call the Appeals Section the morning of September 26 to provide the phone number and the name of the witness to contact. The employer's witness became involved in a last-minute incident on the production floor the morning of September 26. As a result of this incident, the employer did not contact the Appeals Section prior to the scheduled hearing. After the employer's witness had the situation on the production floor resolved, he contacted the Appeals Section for the first time at 8:30 a.m. By the time the employer called, the hearing had been closed and the claimant had been excused. The employer made a request to reopen the hearing.

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 employer received the hearing notice prior to the scheduled September 26 hearing, but did not follow the instructions on the hearing notice. If the employer had followed the instructions, the employer would have been called at the time of the hearing and the witness or someone else may have been available to testify on the employer's behalf. Based on the employer's failure to follow the hearing notice instructions, the employer did not establish good cause to reopen the hearing.

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. 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).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7). The record indicates the employer had justifiable business reasons for discharging the claimant. The claimant's most recent absence, August 14, occurred because he was unable to work due to back problems and he properly notified the employer he was unable to work. As a result, the record does not establish that the claimant intentionally or substantially disregarded the employer's interest by failing to work as scheduled. The claimant

did not commit work-connected misconduct. As of August 12, 2007, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The employer's request to reopen the hearing is denied. The representative's September 11, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of August 12, 2007, the claimant is qualified to receive unemployment insurance 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