

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KYLE YORE

Claimant

APPEAL NO: 14A-UI-10859-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ENTERPRISE RENT-A-CAR COMPANY

Employer

OC: 09/21/14

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Enterprise Rent-A-Car Company (employer) appealed a representative's October 7, 2014 decision (reference 01) that concluded Kyle Yore (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 3, 2014. The claimant participated in the hearing. David Carriere appeared on the employer's behalf. Based on 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.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on September 8, 2010. Since about March 15, 2013 she worked full time as branch rental manager at the employer's Clinton, Iowa location. Her last day of work was September 22, 2014. The employer discharged her on that date. The reason asserted for the discharge was dishonesty.

The claimant prewrote a rental agreement on the evening of July 28 and released the vehicle to the customer. She then learned that the vehicle was subject to a recall and should be brought back in as soon as possible. She spoke to her area supervisor, who told her to leave the ticket open, in prewritten state, which would not indicate on the system that the car was in active rental state. The car was eventually turned back on August 12. The claimant then reported the situation to a risk manager on August 13, who advised her to make an ethical complaint. She proceeded to make the complaint on August 18. In the employer's investigation of the complaint, the employer concluded that the area supervisor did not improperly direct the

claimant, and concluded that it was the claimant, not the area supervisor, who had been dishonest. The employer only provided second-hand testimony during the hearing to this effect. Based upon the employer's conclusion that it had been the claimant who had been dishonest, it discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the conclusion that she had been dishonest in the matter of the recalled car being left out on prewritten status. The claimant testified credibly during the hearing that she had acted on the direction of her area supervisor and that the matter came to the employer's attention because she had reported the matter. The employer relies exclusively on the second-hand account from the area supervisor that the area supervisor had not so directed the claimant; however, without that information being provided first-hand, the administrative law judge is unable to ascertain whether the area supervisor is credible, or whether the employer's witness might have misinterpreted or misunderstood aspects of that report. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant was dishonest in the handling of the matter. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's October 7, 2014 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs